



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 22 सितम्बर, 2020/31 भाद्रपद, 1942

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

13th February, 2020

No. Shram(A) 6-2/2020 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer,

Labour Court Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	873/16	Mohinder Kumar	D.F.O. Chamba	04.11.2019
2.	719/16	Vijay Kumar	D.F.O. Chamba	04.11.2019
3.	18/17	Surjeet Kumar	Vice Chancellor, HPKV V Palampur	04.11.2019
4.	33/17	Gian Chand	Vice Chancellor, HPKV V Palampur	04.11.2019
5.	486/16	Sunil Kumar	M.D. M/s Dehar-II Small Hydro Pro	04.11.2019
6.	82/19	Pawan Kumar	Manager G.D. Goinka Pub. School passu	11.11.2019
7.	732/16	Jagdish Singh	M/s Youngman Synthetic, Una	13.11.2019
8.	188/17	Parvinder Singh & 8 others	Emp. M/s Nestle India Una & Others	14.11.2019
9.	841/16	Tikme Ram	Addl. S.E. HPSEBL, Kullu	14.11.2019
10.	115/17	Shashi Chandel	Emp. M/s GVK EMRI & others	15.11.2019
11.	123/16	Shanti Devi	E.E. HPPWD, Killar	27.11.2019
12.	372/16	Ram Singh	E.E. HPPWD, Killar	28.11.2019
13.	461/15	Kishan Dei	E.E. HPPWD, Killar	28.11.2019
14.	525/15	Janti Devi	E.E. HPPWD, Killar/I.&P.H.	28.11.2019
15.	94/17	Sharva Ram	E.E. HPPWD, Killar/I.&P.H.	28.11.2019
16.	06/17	Reeta	E.E. HPPWD, Killar	29.11.2019
17.	318/16	Vijay Kumar	M/s Arvind Talwar Machine Tools Ltd.	30.11.2019
18.	319/16	Sanjeev Dhiman	-do-	30.11.2019
19.	292/16	Bhajan Singh	-do-	30.11.2019
20.	290/16	Sandeep Kumar	-do-	30.11.2019
21.	291/16	Bakshi Ram	-do-	30.11.2019
22.	315/16	Madan Lal	-do-	30.11.2019
23.	320/16	Sanjeev Rana	-do-	30.11.2019
24.	316/16	Kamal Kumar	-do-	30.11.2019
25.	321/16	Roshal Lal	-do-	30.11.2019
26.	317/16	Ramesh Chand	-do-	30.11.2019
27.	450/16	Maghu Ram	E.E. HPPWD, Killar	30.11.2019
28.	573/16	Karam Lal	-do-	30.11.2019
29.	08/10	Baldev Raj	M/s Mayfair Biotech Pvt. Ltd.	30.11.2019

30	09/10	Sanjeev Kumar	M/s Mayfair Biotech Pvt. Ltd.	30.11.2019
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By order,

NISHA SINGH, IAS
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
 CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 873/2016

Date of Institution : 26.11.2016

Date of Decision : 04.11.2019

Shri Mohinder Kumar s/o Shri Jagat Ram through Shri I.S. Jaryal, General Secretary, District Committee (AITUC), HQ CHEP Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P.
...Petitioner.

Versus

The Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Uday Singh, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of services of Shri Mohinder Kumar through Shri I.S. Jaryal, General Secretary, District Committee (AITUC), HQ CHEP Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P. during December, 2009 to August, 2014 and finally during September, 2014 by the Divisional Forest Officer, Chamba Forest Division, District Chamba, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged as daily waged beldar on muster roll basis by the respondent in the year 2009 with intermittent breaks till August, 2014. Artificial/fictional breaks were given to him by the

respondent so that he could not complete 240 days of continuous service in each calendar year. He was deprived from the benefits of regularization, for which he had made various requests to the concerned authorities, but all in vain. His services were finally terminated in September, 2014 without assigning any reasons. No one month's notice was served upon him, nor any wages in lieu thereof were paid. Retrenchment compensation was also not paid. No prior approval of the government had been obtained before terminating his services. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The principle of 'last come first go' was also not adhered to by the respondent, as persons junior to him, namely, Sh. Gurdial and fifty one others were retained. New/fresh hands had also been engaged. No opportunity of re-employment was afforded to the petitioner. So, the respondent had also violated the provisions of Sections 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but without success. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petitioner were denied on merits. It is averred that the petitioner was engaged as a daily waged labourer by the respondent for seasonal works w.e.f. February, 2009 and that he had worked intermittently upto March, 2014. He thereafter had left the work of his own sweet will. It is specifically denied that the services of the petitioner were illegally terminated by the respondent. It was asserted that neither any breaks were given to him, nor he was terminated by the respondent. He had not completed 240 days in the preceding twelve calendar months and had not fulfilled the conditions of Section 25-B of the Act. So, there was no need to serve any notice under Section 25-F of the Act. The persons mentioned at serial nos. 1 to 52 in the claim petition were not working with the respondent. No person junior to the petitioner had been retained in service by the respondent. The provisions of Sections 25-G and 25-H of the Act had also not been violated. The petitioner is gainfully employed, being an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 12.6.2018:

1. Whether time to time termination of services of the petitioner by the respondent during December, 2009 to August, 2014 is/was legal and justified as alleged? ...*OPP.*
2. Whether final termination of services of petitioner during September, 2014 is/was legal and justified? ...*OPP.*
3. If issue no.1 or issue no.2 are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*
Relief.
6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: Decided accordingly
Issue No.4	: Decided accordingly
Relief.	: Petition is partly allowed as per the operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 4

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Mohinder Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are Mark-A and Mark-B.

In the cross-examination, he denied that there is seasonal work in the department. Self stated that the work is available throughout the year. He admitted that he was engaged in February, 2009 by the department. He denied that he had not worked continuously. He also denied that till March, 2014 he had worked intermittently on muster roll and bill basis. Further, he denied that in the department the work is done on its availability and budget. He admitted that a correct mandays of his work has been given by the department. He specifically denied that no fictional breaks had been given to him by the department. He clearly admitted that he had not completed 240 days in any year. He owns land, which he cultivates. He clearly denied that no worker junior to him had been kept and that the persons whose names have been mentioned in para no.4 of the petition and in para no.3 of his affidavit are not working in the department. He also denied that he had not been retrenched by the department. It was also denied by him that only those workers have been regularized, who as per the policy of the government had worked for more than 240 days.

11. Ex.PZ-1 & Ex. PZ-2 are the copies of working days in respect of Shri Moti Ram and Smt. Musrabu.

12. Ex.P-X is the copy of reply to the demand notice filed before the Labour Officer- cum- Conciliation Officer, Chamba, District Chamba.

13. Ex.P-Y is the copy of letter dated 26.9.2017 regarding regularization of daily waged workers/contingent paid workers.

14. Conversely, Shri Sanjeev Sharma, Divisional Forest Officer, Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was engaged by the department in February, 2009. He also admitted that as and when the work was being given by the department, the petitioner had been coming to work. He specifically denied that the petitioner was removed from work in August, 2014. Volunteered that, he himself had abandoned the work. He admitted that no notice was given to the petitioner when he had not reported on work after 2014. He also admitted that as per the record no retrenchment compensation had been given to the petitioner. He also admitted that the seniority of daily wagers is maintained at Divisional level. He specifically denied that the petitioner had worked for 240 days in each year. He admitted that Kailash Chand, Singhu, Viyas Dev and Paras Ram have been regularized in the department.

15. Ex.RW1/B is the copy of mandays chart relating to the petitioner.

16. It is the admitted case of the parties that the services of the petitioner had been engaged as a daily waged beldar. The mandays chart Ex.RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in February, 2009 by the respondent.

17. The version of the petitioner is that from the month and year of his initial engagement to August, 2014, artificial/fictional breaks in service were provided to him by the respondent.

18. While denying the said facts, the respondent has pleaded that the petitioner had been doing the work intermittently as per his sweet will and convenience. No intentional breaks in service were provided to the petitioner at any point of time.

19. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged?

20. If intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, then why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payments for the working days actually put in by him? Ex. RW1/B unfolds that in the years 2009, 2010 to March, 2014, the petitioner worked under the respondent on muster rolls as well as bill basis. A person working for less than 50 days in the whole year cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondent/department wrongly and illegally. The fact that the petitioner had remained tight lipped and complacent about his rights for many years and had been receiving the payments without any protests speaks volumes about the truthfulness and veracity of his claim. To my mind, a false plea of intentional breaks has been put forth by the petitioner. No artificial/fictional breaks were given to the petitioner by the respondent during the course of his employment.

21. Now coming to the question as to whether in the month of September, 2014, the services of the petitioner were finally terminated by the respondent (as per the reference) or not?

22. In the reply, the respondent has specifically pleaded that after August, 2014 the petitioner willingly left the job and never reported back for duty. During the cross-examination, the petitioner (PW1) specifically denied that he had been coming and going to work at his own convenience.

23. It is common knowledge that the abandonment has to be proved by the employer like any other fact. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to join his duties. Absence from duty is a serious misconduct. There is nothing on record to show that any disciplinary action was initiated against

the petitioner by the respondent because of the alleged willful absence from work of the former. The plea of abandonment put forth by the respondent/employer is not established.

24. From the mandays chart Ex. RW1/B placed on the file, it becomes clear that the petitioner had not completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, i.e. September, 2014, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

25. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 4 of the statement of claim. The respondent has refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, it stands admitted by the respondent (RW1) that S/Shri Kailash Chand, Singhu, Viyas Dev and Paras Ram have been regularized in the department. The result of Departmental Screening Committee Meeting held on 26.9.2017 to consider the daily wagers of Chamba Forest Circle for regularization, Ex.PY, clearly demonstrates that persons junior to the petitioner are serving the respondent/department. This indicates that the respondent has failed to adhere to the principle of 'last come first go'. Retaining juniors at the cost of senior is nothing but unfair labour practice. Since, the provisions of Sections 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as ***State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286***.

26. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

27. It was for the petitioner to prove that during the period he was out of the job, he was unemployed. To my mind, a man like the petitioner will not sit idle. Then, he while under cross-examination was specific that he owns land, which he cultivates. He has failed to discharge the initial onus that during the period he was not in service, he was not gainfully employed.

28. In view of the discussion and findings aforesaid, it is held that the claim petition with regard to alleged artificial/fictional breaks w.e.f. February, 2009 to August, 2014 is not maintainable. The claim with regard to final termination of services of the petitioner by the respondent during September, 2014 is maintainable.

29. These issues are decided accordingly.

RELIEF

30. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to time to time termination w.e.f. February, 2009 to August, 2014 being meritless and not maintainable is dismissed. However, the retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage

the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date/month of his illegal termination *i.e.* September, 2014, except for back wages. The claim petition to that extent succeeds and is allowed. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 719/2016

Date of Institution : 06.10.2016

Date of Decision : 04.11.2019

Shri Vijay Kumar s/o Shri Chhangu Ram, through Shri I.S. Jaryal, General Secretary, District Committee (AITUC), CHEP Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P.
...Petitioner.

Versus

The Divisional Forest Officer, Chamba Forest Division, Chamba, District Chamba, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Uday Singh, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Vijay Kumar s/o Shri Chhangu Ram through Shri I.S. Jaryal, General Secretary, District Committee (AITUC), CHEP Stage-II, Karian, P.O. Hardaspura, Tehsil & District Chamba, H.P. during August, 1995 to August, 2014 and finally during September, 2014 by the Divisional Forest Officer, Chamba Forest Division Chamba, District Chamba, H.P., without complying with the provisions of

the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was initially engaged as daily waged beldar on muster roll basis by the respondent in the month of August, 1995 with intermittent breaks till August, 2014. Artificial/fictional breaks were given to him by the respondent so that he could not complete 240 days of continuous service in each calendar year. He was deprived from the benefits of regularization, for which he had made various requests to the concerned authorities, but all in vain. His services were finally terminated in September, 2014 without assigning any reasons. No one month's notice was served upon him, nor one month wages in lieu of the notice was paid. Retrenchment compensation was also not paid. No prior approval of the government had been obtained before terminating his services. The respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The principle of 'last come first go' was also not adhered to by the respondent, as persons junior to him, namely, Sh. Gurdial and fifty one others were retained. New/fresh hands had also been engaged. No opportunity of re-employment was afforded to the petitioner. So, the respondent had also violated the provisions of Sections 25-G and 25-H of the Act. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but without success. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection regarding lack of maintainability. The contents of the petitioner were denied on merits. It is averred that the petitioner was engaged as a daily waged labourer by the respondent for seasonal works w.e.f. August, 1995 and that he had worked intermittently upto August, 2014. He thereafter had left the work of his own sweet will. It is specifically denied that the services of the petitioner were illegally terminated by the respondent. It was asserted that neither any breaks were given to him, nor he was terminated by the respondent. He had not completed 240 days in the preceding twelve calendar months and had not fulfilled the conditions of Section 25-B of the Act. So, there was no need to serve any notice under Section 25-F of the Act. The persons mentioned at serial nos. 1 to 52 in the claim petition were not working with the respondent. No person junior to the petitioner had been retained in service by the respondent. The provisions of Sections 25-G and 25-H of the Act had also not been violated. The petitioner is gainfully employed, being an agriculturist. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 12.6.2018:

1. Whether time to time termination of services of the petitioner by the respondent during August, 1995 to August, 2014 is/was legal and justified as alleged? ...*OPP*.
2. Whether final termination of services of petitioner during September, 2014 is/was legal and justified? ...*OPP*.
5. If issue no.1 or issue no.2 are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.

6. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*
Relief.
7. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.
8. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.
9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:
- Issue No. 1 : Decided accordingly
- Issue No. 2 : Decided accordingly
- Issue No. 3 : Decided accordingly
- Issue No. 4 : Decided accordingly
- Relief. : Petition is partly allowed as per the operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 4

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vijay Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/D.

In the cross-examination, he denied that there is seasonal work in the department. Self stated that the work is available throughout the year. He admitted that he was engaged in August, 1995 by the department. He denied that he had not worked continuously. He also denied that till August, 2014, he had worked intermittently on muster roll and bill basis. Further, he denied that in the department the work is done on its availability and budget. He admitted that a correct mandays of his work has been given by the department. He specifically denied that no fictional breaks had been given to him by the department. He clearly admitted that he had not completed 240 days in any year. He owns land, which he cultivates. He clearly denied that no worker junior to him had been kept and that the persons whose names have been mentioned in para no.4 of the petition and in para no.3 of his affidavit are not working in the department. He also denied that he had not been retrenched by the department. It was also denied by him that only those workers have been regularized, who as per the policy of the government had worked for more than 240 days.

11. Conversely, Shri Sanjeev Sharma, Divisional Forest Officer, Chamba (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was engaged by the department in August, 1995. He also admitted that as and when the work was being given by the department, the petitioner had been coming to work. He specifically denied that the petitioner was removed from work in September, 2014. Volunteered that, he himself had abandoned the work. He admitted that no notice was given to the petitioner when he had not reported on work after 2014. He also admitted that as per the record no retrenchment compensation had been given to the petitioner. He also admitted that the seniority of daily wagers is maintained at Divisional level. He specifically denied that the petitioner had worked for 240 days in each year. He admitted that Kailash Chand, Singhu, Viyas Dev and Paras Ram have been regularized in the department.

12. Ex. RW1/B is the copy of mandays chart relating to the petitioner.

13. It is the admitted case of the parties that the services of the petitioner had been engaged as a daily waged beldar. The mandays chart Ex.RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in August, 1995 by the respondent.

14. The version of the petitioner is that from the month and year of his initial engagement to August, 2014, artificial/fictional breaks in service were provided to him by the respondent.

15. While denying the said facts, the respondent has pleaded that the petitioner had been doing the work intermittently as per his sweet will and convenience. No intentional breaks in service were provided to the petitioner at any point of time.

16. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged?

17. If intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, then why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payments for the working days actually put in by him? Ex. RW1/B unfolds that in the years 1995, 1997 to 2014, the petitioner worked under the respondent on muster rolls as well as bill basis. He had not worked even for a single day in the year 1996. A person not working for a single day or for less than 50 days in the whole year cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondent/department wrongly and illegally. The fact that the petitioner had remained tight lipped and complacent about his rights for many years and had been receiving the payments without any protests speaks volumes about the truthfulness and veracity of his claim. To my mind, a false plea of intentional breaks has been put forth by the petitioner. No artificial/fictional breaks were given to the petitioner by the respondent during the course of his employment.

18. Now coming to the question as to whether in the month of September, 2014, the services of the petitioner were finally terminated by the respondent (as per the reference) or not?

19. In the reply, the respondent has specifically pleaded that after August, 2014 the petitioner willingly left the job and never reported back for duty. During the cross-examination, the petitioner (PW1) specifically denied that he had been coming and going to work at his own convenience.

20. It is common knowledge that the abandonment has to be proved by the employer like any other fact. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. It has come in the statement of the respondent (RW1) that no notice was served upon the petitioner calling upon him to join his duties. Absence from duty is a serious

misconduct. There is nothing on record to show that any disciplinary action was initiated against the petitioner by the respondent because of the alleged willful absence from work of the former. The plea of abandonment put forth by the respondent/employer is not established.

21. From the mandays chart Ex. RW1/B placed on the file, it becomes clear that the petitioner had not completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, i.e. September, 2014, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as ***Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138*** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

22. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para 4 of the statement of claim. The respondent has refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the department. Significantly, it stands admitted by the respondent (RW1) that S/Shri Kailash Chand, Singhu, Viyas Dev and Paras Ram have been regularized in the department. The seniority list of daily wagers of Chamba Forest Circle who have completed eight years of continuous service as on 31.3.2013, Ex.PW1/D and the result of Departmental Screening Committee Meeting held on 26.9.2017 to consider the daily wagers of Chamba Forest Circle for regularization, Ex.PY, clearly demonstrate that persons junior to the petitioner are serving the respondent/department. This indicates that the respondent has failed to adhere to the principle of 'last come first go'. Retaining juniors at the cost of senior is nothing but unfair labour practice.

Since, the provisions of Sections 25-G of the Act have been contravened, it was not obligatory for the petitioner to have completed 240 days in a block of twelve calendar months preceding termination to derive the benefit under this Section of the Act. For taking this view, I am guided by the judgment rendered by our own Hon'ble High Court in case titled as ***State of Himachal Pradesh & Anr. Vs. Shri Partap Singh, 2017 (1) Him L.R. 286***.

23. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

24. It was for the petitioner to prove that during the period he was out of the job, he was unemployed. To my mind, a man like the petitioner will not sit idle. Then, he while under cross-examination was specific that he owns land, which he cultivates. He has failed to discharge the initial onus that during the period he was not in service, he was not gainfully employed.

25. In view of the discussion and findings aforesaid, it is held that the claim petition with regard to alleged artificial/fictional breaks w.e.f. August, 1995 to August, 2014 is not maintainable. The claim with regard to final termination of services of the petitioner by the respondent during September, 2014 is maintainable.

26. These issues are decided accordingly.

RELIEF

27. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to time to time termination w.e.f. August, 1995 to August, 2014 being meritless and not maintainable is dismissed. However, the retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. He shall be entitled to seniority and continuity in service from the date/month of his illegal termination i.e. September, 2014, except for back wages. The claim petition to that extent succeeds and is allowed. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial,
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 18/2017
Date of Institution : 07.1.2017
Date of Decision : 04.11.2019

Shri Surjeet Kumar s/o Shri Hari Krishan, r/o Village Lamlehar, P.O. Ghad, Tehsil Palampur, District Kangra, H.P. ...Petitioner.

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.
2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. ...Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Surjeet Kumar S/O Shri Hari Krishan, R/O Village Lamlehar, P.O. Ghad, Tehsil Palampur, District Kangra, H.P. by (1) The Vice Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Plampur, District Kangra, H.P. (2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, palampur, District Kangra, H.P. during the year 2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Organic Farm department *w.e.f.* 11th May, 2006 and he continued to work as such upto the year 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Organic Farm department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Organic Farm department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31.8.2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference no.207/2010. It was accepted by the President of the union and application no.25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the

year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents w.e.f. 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Organic Farm department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during July, 2007, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondents are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the

respondent university at his own will. He had worked as a contractor from the month of July, 2007. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner did not come to attend his work at his own, as he was not interested to work as a labourer. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 04.7.2018:

1. Whether the verbal termination of the services of the petitioner by the respondents during year, 2010 is/was legal and justified as alleged? ...*OPP.*
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*
4. Whether the petitioner has no cause of action to file present case as alleged? ...*OPR.*
5. Whether the petitioner has no locus standi to file the present case as alleged? ...*OPR.*
6. Whether this court has no jurisdiction to file the present case as alleged? ...*OPR.*
7. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...*OPR.*
8. Whether the petitioner has not approached this court with clean hands as alleged? ...*OPR.*

9. Whether the petitioner has suppressed true and material facts from the court as alleged? ...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Surjeet Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondents examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copy of letter dated 8.7.1998 as Ex. RW1/D, copies of bill vouchers as Ex. RW1/D1 to Ex. RW1/D10, copy of Award dated 30.6.2014 as Ex. RW1/E, copy of order dated 20.3.2014 as Ex. RW1/F, copy of license/registration dated 29.1.2011 as Ex. RW1/G, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/H, copy of application dated 26.7.2011 as Ex. RW1/I, copy of certificate dated 11.7.2014 as Ex. RW1/J and copies of agreement deeds dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/K to Ex. RW1/O.

7. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Yes
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Yes
Issue No.5	: Yes
Issue No.6	: Not pressed
Issue No.7	: No
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES No.1, 2 & 7

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Surjeet Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-R-A to Mark-R-D (now as Ex. RW1/D1 to Ex. RW1/D4). He admitted that seasonal work is done in the fields. He works in the fields as a beldar. He denied that he is making a phoney statement.

11. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondents.

In the cross-examination, he denied that the petitioner was kept at work in the year 2006. Volunteered that, he had never worked with the respondents and thereafter stated that after the year 2010 the workers had been kept on outsource basis. Earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2008 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

12. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

13. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

14. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

15. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

16. Ex. RW1/D is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

17. Ex. RW1/D1 to Ex. RW1/D10 are copies of contingent bills/bills pertaining to the petitioner and others.

18. Ex. RW1/E is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

19. Ex. RW1/F is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

20. Ex.RW1/G is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

21. Ex.RW1/H is the copy of certificate of registration dated 27.7.2011 pertaining to the M/s Sun Security Services.

22. Ex.RW1/I is the copy of application for registration of establishment employing contract labour.

23. Ex.RW1/J is the copy of certificate of registration relating to M/s Nu Vision Commercial & Escorts Services.

24. Ex. RW1/K is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

25. Ex. RW1/L is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

26. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

27. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

28. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

29. Ex.R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as stood on 31.3.2006.

30. Ex.R2 is the copy of letter dated 25.5.2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

31. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

32. In the case on hand, it was asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis. The respondents denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner

to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself have placed on record the revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondents. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It is the case of the respondents that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on bills, Ex. RW1/D1 to Ex. RW1/D4. These are bills/lists through which payments were made to the petitioner. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D1 to Ex. RW1/D4, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being bills/lists. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex.RW1/D. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. RW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. So, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

33. Next, it was claimed by the petitioner that he had worked continuously with the respondents from the year 2006 upto the year 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondents, his name ought to have figured in the seniority lists maintained by the respondents. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondents and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

34. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273***;

State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

35. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

36. Reference was also made by the petitioner to the case titled as ***Goa M.R.F. Employees' Union vs. I CARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondents, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

37. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondents. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are decided against the petitioner, while issue no.7 is answered in the negative.

ISSUES No. 3 to 5, 8 & 9

38. Taking into account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative.

ISSUE No. 6

39. Not pressed.

RELIEF

40. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 33/2017

Date of Institution : 07.1.2017

Date of Decision : 04.11.2019

Shri Gian Chand s/o Shri Brahma Ram, r/o Village Oder, P.O. Sungal, Tehsil Palampur,
District Kangra, H.P. *...Petitioner.*

Versus

1. The Vice Chancellor, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P.
2. The Registrar, Chaudhry Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya, Palampur, District Kangra, H.P. *...Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the respondents : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether the verbal termination of services of Shri Gian Chand S/O Shri Brahma Ram, R/O Village Oder, P.O. Sungal, Tehsil Palampur, District Kangra, H.P. by (1) The Vice

Chancellor, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, Plampur, District Kangra, H.P.

(2) The Registrar, Chaudhry Sarwan Kumar, Himachal Pradesh Krishi Vishva Vidyalya, palampur, District Kangra, H.P. w.e.f. 01.09.2010 without serving notice, without holding enquiry and without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, to what back wages, service benefits and relief the above named daily wages worker is entitled to from the above employers?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondents as a daily waged worker on daily rated basis in Tea Husbandry department w.e.f. 8th October, 2003 and he continued to work as such upto 31.8.2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondents. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondents. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondents, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18.6.2009, but the respondents had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Husbandry department to join the rolls of the contractor, namely Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondents in the year 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation had been paid. The petitioner had worked continuously and had completed 240 days in each calendar year w.e.f. the year 2003 upto 31.8.2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14.7.2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference no.207/2010. It was accepted by the President of the union and application no. 25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondents under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondents vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14.7.2011, the petitioner had joined the services and had worked continuously upto 31.3.2012. After the termination of the contract of M/s Sahayta Security Services, the respondents had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondents w.e.f. 31.3.2013 and from 1.4.2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who

is presently working with the respondents. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked in the control of project investigator and he had only been making payment to the petitioner from the year 2007 to 31.3.2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Tea Husbandry department from 18.7.2011 upto 11.6.2014. Payment was made by the respondents to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22.1.2000 on contract basis and her services have been regularized as a clerk by the respondents since 2010. As and when the respondents had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondents without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondents from time to time without making any application. The act and conduct of the respondents was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondents and that the petitioner had not approached the Court with clean hands and had suppressed the material facts. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis from October, 2003, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondents are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondents university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondents university at his own will. He had worked as a contractor from the month of October, 2003. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner did not come to attend his work at his own, as he was not interested to work as a labourer. He only began to work under the registered contractor after interim order dated 14.7.2011 passed by this Court. The Director of Research of the respondents had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as

withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondents had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondents, thus, pray for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 04.7.2018:

1. Whether the verbal termination of the services of the petitioner by the respondents during 01-09-2010 is/was legal and justified as alleged? ...*OPP*.
2. If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.
4. Whether the petitioner has no cause of action to file present case as alleged? ...*OPR*.
5. Whether the petitioner has no locus standi to file the present case as alleged? ...*OPR*.
6. Whether this court has no jurisdiction to file the present case as alleged? ...*OPR*.
7. Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ...*OPR*.
8. Whether the petitioner has not approached this court with clean hands as alleged? ...*OPR*.
9. Whether the petitioner has suppressed true and material facts from the court as alleged? ...*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Gian Chand appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondents examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of office order dated 27.11.2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31.5.2010 as Ex. RW1/B2, copy of Notification dated 13.11.1998 as Ex. RW1/C, copy of letter dated 8.7.1998 as Ex. RW1/D, copies of bill vouchers as Ex. RW1/D1 to Ex. RW1/D10, copy of Award dated 30.6.2014 as Ex. RW1/E, copy of order dated 20.3.2014 as Ex. RW1/F, copy of license/registration dated 29.1.2011 as Ex. RW1/G, copy of license of M/s Sun Security dated 27.7.2011 as Ex. RW1/H, copy of application dated 26.7.2011 as Ex. RW1/I, copy of certificate dated 11.7.2014 as Ex. RW1/J and copies of agreement deeds dated 30.8.2010, 31.3.2011, 30.3.2012, 18.6.2013, 31.3.2015, 12.5.2015 as Ex. RW1/K to Ex. RW1/O.

7. Arguments of the learned Authorized Representative for the petitioner and the learned counsel for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Yes
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Yes
Issue No.5	: Yes
Issue No.6	: Not pressed
Issue No.7	: No
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award

REASONS FOR FINDINGS

ISSUES No.1, 2 & 7

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Gian Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are

mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-R-A to Mark-R-J (now as Ex. RW1/D1 to Ex. RW1/D10). He admitted that seasonal work is done in the fields. He works in the fields as a beldar. He denied that he is making a phoney statement.

11. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondents.

In the cross-examination, he denied that the petitioner was kept at work in the year 2003. Volunteered that, he had never worked with the respondents and thereafter stated that after the year 2010 the workers had been kept on outsource basis. Earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2008 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

12. Ex. RW1/B is the copy of office order dated 27.11.2017 issued by the Registrar, CSK HPKV Palampur.

13. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

14. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

15. Ex. RW1/C is the copy of notification dated 13.11.1998 issued by the Comptroller, HPKV, Palampur.

16. Ex. RW1/D is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

17. Ex. RW1/D1 to Ex. RW1/D10 are copies of contingent bills/bills pertaining to the petitioner and others.

18. Ex. RW1/E is the copy of the Award dated 30.6.2014 passed in Reference No.124/2011 by this Court.

19. Ex. RW1/F is the copy of order dated 20.3.2014 passed in Reference no.207/2010 by this Court.

20. Ex. RW1/G is the copy of certificate of registration dated 29.1.2011 relating to M/s Sahayata Security Services.

21. Ex.RW1/H is the copy of certificate of registration dated 27.7.2011 pertaining to the M/s Sun Security Services.

22. Ex.RW1/I is the copy of application for registration of establishment employing contract labour.

23. Ex.RW1/J is the copy of certificate of registration relating to M/s Nu Vision Commercial & Escorts Services.

24. Ex. RW1/K is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

25. Ex. RW1/L is the copy of Agreement Deed dated 31.3.2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

26. Ex. RW1/M is the copy of Agreement Deed dated 18.6.2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

27. Ex. RW1/N is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

28. Ex. RW1/O is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

29. Ex.R1 is the copy of letter dated 4.10.2007 regarding tentative seniority list of daily waged workers/Mess workers as stood on 31.3.2006.

30. Ex.R2 is the copy of letter dated 25.5.2009 regarding seniority list of daily waged workers/Mess Helpers as on 31.3.2008.

31. The first question which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondents or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

32. In the case on hand, it was asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis. The respondents denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondents. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Rather, the respondents in the cross-examination of the petitioner itself have placed on record the revised seniority list of daily paid workers in the university, as it stood on 31.3.2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31.3.2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did

not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondents. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It is the case of the respondents that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on bills/contingent bills, Ex. RW1/D1 to Ex. RW1/D10. These are bills/lists through which payments were made to the petitioner. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D1 to Ex. RW1/D10, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being bills/contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. RW1/D. It is also evident from the notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. RW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. So, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2003 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondents.

33. Next, it was claimed by the petitioner that he had worked continuously with the respondents from the year 2003 upto the year 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondents, his name ought to have figured in the seniority lists maintained by the respondents. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondents and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

34. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

35. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

36. Reference was also made by the petitioner to the case titled as ***Goa M.R.F. Employees' Union vs. I CARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondents, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

37. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondents. No muster roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondents. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. He is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are decided against the petitioner, while issue no.7 is answered in the negative.

ISSUES No. 3 to 5, 8 & 9

38. Taking in to account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative.

ISSUE No. 6

39. Not pressed.

RELIEF

40. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order

as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 486/2016

Date of Institution : 22.8.2016

Date of Decision : 04.11.2019

Shri Sunil Kumar s/o Shri Pritam Chand, r/o Village Lahar, P.O. Tikkari, Tehsil Sinhuta,
District Chamba, H.P. *...Petitioner.*

Versus

1. The Employer/Managing Director, M/s Dehar II Small Hydro Electric Project, V.P.O. Tikri, Sub Tehsil Sihunta, District Chamba, H.P. (Site Office)
2. The Employer, M/S Saini Techno Constructs Private Limited, 236, Bajri Company, Bumrah Shell Road, Pathankot, Punjab (Present office) *...Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vikram Samyal, Adv. vice

For the Respondent : Sh. Rajat Chaudhary, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sunil Kumar S/O Shri Pritam Chand, R/O Village Lahar, P.O. Tikkari, Tehsil Sinhuta, District Chamba, H.P. w.e.f. 12-11-2014 by (i) the Employer/Managing Director, M/S Dehar II Small Hydro Electric Project, V.P.O. Tikri, Sub Tehsil Sihunta, District Chamba, H.P. (Site Office) (ii) the Employer/Management, M/S Saini Techno Constructs Private Limited, 236, Bajri Company, Bumrah Shell Road, Pathankot, Punjab (Present Office) without complying with the provisions of the Industrial

Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that the construction of Dehar-II Small Hydro Electric Project had commenced in the year 2007. Before starting the project, the grandfather of the petitioner had been allured to sell his land to the project on the premise that the petitioner would be given a permanent job in the project. Fertile land was sold by his grandfather to the management. He was kept as a daily waged beldar by the respondents in the year 2007. No regular appointment letter had been issued, nor the wage slips were given till the year 2011. The management had started issuing wage slips in his favour for monthly wages of Rs.4325/- including EPF. His services were confirmed as a beldar on 1.12.2012 vide letter dated December 10, 2012. However, his services were retrenched on 11.12.2014, in utter violation of the law. At present more than 15 workers are on the rolls of the respondents. The petitioner had completed 240 days in every calendar year. His disengagement/retrenchment is unfair, unjust, illegal, arbitrary, malafide and unconstitutional. He had regularly approached the respondents to re-engage him, but without success. He is not gainfully employed. The respondents had not followed the principle of 'last come first go'. The provisions of Sections 25-F and 25-G of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) have been violated by the respondents. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, jurisdiction, locus standi, cause of action, estoppel and that the petitioner had had not approached the Court with clean hands and has suppressed the material facts. The contents of the petition were denied on merits. It was denied that the grandfather of the petitioner had been allured to sell his land to the project on the pretext that the petitioner would be given a permanent job in the project. The grandfather of the petitioner had sold the land at a high price to the respondents. It was specifically denied that the petitioner was initially kept as a beldar on daily wages in the year 2007. Infact, he had been engaged by a contractor in the year 2011 in the respondent company. On a written request dated 30.11.2012, the petitioner was appointed as a beldar-cum-unskilled labourer on 1.12.2012. It was also denied that the petitioner had been engaged as a beldar from the year 2011 upto 11.11.2014. The petitioner had not followed the terms and conditions of the appointment letter. A number of times he was found negligent in service and at times he had indulged in illegal activities during the duty hours. Show cause notices were issued, when written apologies were tendered by him to the respondents. The petitioner had not completed 240 days in any calendar year. His services have been retrenched by the respondents in accordance with law. He has received all his dues and benefits from the respondents. On 15.12.2014 the petitioner himself had left the job and had tendered his resignation in writing to the respondents. Compensation as per the Act has also been paid to the petitioner. The respondents have not violated any of the provisions of the Act. The respondents, thus, pray for the dismissal of the claim petition.

4. No rejoinder was filed by the petitioner.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 23.5.2019:

1. Whether termination of the services of the petitioner by the respondents w.e.f. 12-11-2014 is/was illegal and unjustified, as alleged? ...*OPP*.
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ...*OPP*.

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3. Whether the claim petition is not maintainable, as alleged? ...*OPR.*
 4. Whether this Court has no jurisdiction to decide the present case, as alleged? ...*OPR.*
 5. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? ...*OPR.*
 6. Whether the petitioner is estopped by his act and conduct to file the case, as alleged? ...*OPR.*
 7. Whether the petitioner has not approached the Court with clean hands and has suppressed the true and material facts from this Court, as alleged? ...*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned counsel for the respondents, as per his statement made at bar did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: No
Issue No.2	: Negative
Issue No.3	: No
Issue No.4	: Not pressed
Issue No.5	: Not pressed
Issue No.6	: Not pressed
Issue No.7	: Not pressed
Relief	: Claim petition dismissed vide operative portion of the Award.

REASONS FOR FINDINGS

ISSUE NO.1 and 2

9. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents w.e.f. 11.12.2014 by violating the various provisions of the Act. It was asserted that the petitioner had been engaged on daily wage basis in the year 2007 and had continuously worked as such till the year 2014. A plea was also taken by the petitioner that the respondent had not adhered to the principle of 'last come first go', as persons junior to him were allowed to continuously work. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned counsel for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2014. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in the statement of claim maintained that at the time his services were terminated, persons junior him had been retained by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondents. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

17. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

ISSUE NO. 3

19. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. From the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

ISSUES No. 4 to 7

20. Not pressed.

RELIEF

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 82/2019
Date of Institution : 26.6.2019
Date of Decision : 11.11.2019

Shri Pawan Kumar s/o Shri Chaman Lal, r/o V.P.O. Rehlu, Tehsil Shahpur, District Kangra,
H.P. ...*Petitioner.*

Versus

The Manager, G.D. Goinka Public School, Passu, Tehsil Dharamshala, District Kangra,
H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Petitioner in person

For the Respondent : Sh. Rajat Chaudhary, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Pawan Kumar s/o Shri Chaman Lal, r/o V.P.O. Rehlu, Tehsil Shahpur, District Kangra, H.P. (who was employed as driver) w.e.f. 14-04-2018 by the Manager, G.D. Goinka Public School, Passu, Tehsil Dharamshala, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case is listed for filing of statement of claim by the petitioner, but, however, Shri Pawan Kumar (petitioner) has made the below given statement in the Court today:-

“ब्यान किया कि मेरा प्रत्यर्थी के साथ आपसी समझौता हो गया है। अब यह केस आगे न चलाना चाहता हूँ व केस वापिस लेता हूँ।”

3. In view of the above statement, this reference is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 11th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 732/2016

Date of Institution : 18.11.2016

Date of Decision : 13.11.2019

Shri Jagdish Singh s/o Shri Pushkar Singh, r/o V.P.O. Kanda, Tehsil Jakholi, District Rudra Prayag, Uttarakhand
...Petitioner.

Versus

The Employer, M/S Youngman Synthetics, Village Gondpur Jaichand, Tehsil Haroli, District Una, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. Rajat Chaudhary, Adv. Vice

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Jagdish Singh S/O Shri Pushkar Singh, R/O V.P.O. Kanda, Tehsil Jakholi, District Rudra Prayag, Uttarakhand w.e.f. 18-03-2014 by the Employer, M/S Youngman Synthetics, Village Gondpur Jaichand, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case was listed for appearance of the petitioner for today but, however, neither the petitioner nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board,

Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to file the statement of claim, adduce evidence or argue his case.

8. In the instant case, neither the workman nor his counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the petitioner to plead and prove on record that the termination of his services w.e.f.18.03.2014 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the petitioner/workman. At the risk of repetition the petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any back wages, seniority, past service benefits and compensation. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of November, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 188/2017

Date of Institution : 19.8.2017

Date of Decision : 14.11.2019

Shri Parvinder Singh & 8 other housekeeping workers C/O Datta Property Dealer, Near HRTC Workshop, District Una, H.P. ...Petitioners.

Versus

1. The Employer, M/S Nestle India, Industrial Area Tahliwal, District Una, H.P. (Principal Employer)
2. The Employer, M/S Impressions Services Private Limited, Regd. Office WZ-87 (F.F.), Kirti Nagar, Industrial Area, New Delhi (Contractor) ...Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioners : Petitioner (Sh. Parvinder Singh) in person with Sh. R.K. Singh Parmar, AR

For Respondent No.1 : Sh. Rajeev Kumar Sharma, Adv.

For Respondent No.2 : Sh. M.K. Awtaney & Sh. Rajeev Gupta, Advocates along-with Shri Rahul Garg & Shri Keshav Shukla, ARs

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the demands no.1 & 2 regarding annual increment, shoes and uniform raised vide demand notice dated 21-03-2016 (copy enclosed) by Shri Parvinder Singh & 8 other housekeeping workers C/O Datta Property Dealer, Near HRTC Workshop, District Una, H.P. to be fulfilled by (i) the Employer M/S Nestle India, Industrial Area Tahliwal, District Una, H.P. (Principal Employer) (ii) the Employer, M/S Impressions Services Private Limited, Regd. Office WZ-8/7 (F.F.), Kirti Nagar, Industrial Area, New Delhi (Contractor) are legal, justified and maintainable? If yes, what relief and benefits the above workers are entitled to by the above employers?”

2. The case is listed for evidence of the petitioners, but, however, Shri Parvinder Singh (one of the petitioners) has made the below given statement in the Court today:—

“ब्यान किया कि मैं अपनी और बाकी कामगारों की ओर से केस आगे न चलाना चाहता हूँ। और केस वापिस लेता हूँ।”

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of November, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 841/2016

Date of Institution : 26.11.2016

Date of Decision : 14.11.2019

Shri Tikme Ram s/o Shri Damodar Das, r/o Village Farsh, P.O. Nagwain, Sub Tehsil Aut,
District Mandi, H.P. ...Petitioner.

Versus

The Additional Superintending Engineer, Electrical Division, H.P.S.E.B.L., Kullu,
District Kullu, H.P. ...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. N.D. Sharma, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Tikme Ram S/O Shri Damodar Dass, R/O Village Farsh, P.O. Nagwain, Sub Tehsil Aut, District Mandi, H.P. w.e.f. 26.03.2000 by the Addl. Superintending Engineer, Electrical Division, H.P.S.E.B.L., Kullu, District Kullu, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after more than 11 years vide demand notice dated 16.01.2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was initially engaged on daily waged basis vide muster roll no.383 w.e.f. 26.9.1988. His services had been terminated by the respondent on 31.3.2000 without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The petitioner had

worked to the satisfaction of his superiors. He had never left the work of his own. No casual cards were issued to him. No seniority list of all the workers has been prepared and supplied. The petitioner has been victimized. His termination is against the principle of natural justice and fair play. Junior workers, namely, S/Sh. Bhawani Singh, Jai Kumar, Bula Ram, Keshav Singh, Dualat Ram, Salgi Ram and Naveen Kumar were favoured and allowed to complete 240 days in a year. No notice was given to the petitioner when new workmen were engaged. The petitioner was not gainfully employed after his illegal termination. The petitioner, thus, prays for his re- engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection that the matter is not covered under Section 10 of the Act. The contents of the petition were denied on merits. However, it was claimed that the petitioner had worked since 26.9.1988 as a casual labourer upto 25.3.2000. He had never been retrenched or terminated by the respondent. He had left the job of his own. He had been attending the work at his own convenience. As per the mandays chart the petitioner was not regular in work and had been habitually absenting himself. He had left the job without intimation and had never contacted the respondent. He had never completed 240 days in the preceding twelve calendar months. The principle of 'last come first go' had been adhered to. The workmen, namely, S/Sh. Bhawani Singh, Jai Kumar, Bula Ram, Keshav Singh, Dualat Ram, Salgi Ram and Naveen Kumar had worked regularly and had completed the required period. Thereafter, they had been engaged as per the orders of the Court. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 18.09.2018:

1. Whether termination of the service of petitioner by the respondent *w.e.f.* 26-03-2000 is/was legal and justified as alleged? ...*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*
3. Whether the claim petition suffers from delay and laches as alleged? ...*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Negative

Issue No.2 : Lump sum compensation of ₹ 25,000/-.

Issue No.3 : Negative

Relief : Petition is partly allowed as per the operative part of the Award.

REASONS FOR FINDINGS**ISSUE No.1 to 3**

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Tikme Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed document purportedly in support of his claim, which is Ex.PW1/B.

In the cross-examination, he admitted that he had worked as a beldar upto the year 2000. He also admitted that he was being called to the work by the department and after 2000 he had not been called. He specifically denied that he himself had left the job. He also denied that he had not been removed from work by the department. Further, he denied that he was making a phoney statement.

11. Ex.PW1/B is the copy of mandays chart relating to the petitioner.

12. Conversely, Shri Room Singh, Executive Engineer, HPSEBL, Division Thalot, District Mandi, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that no notice had been served upon the petitioner by the department from absenting from duty. Volunteered that, no such notice is given to the daily wagers. He also admitted that no notice had been served upon the petitioner for leaving the job. S/Sh. Durga Dass, Ratto Ram, Jai Ram, Sipta Ram, Lajja Ram, Khalindu Ram etc. were kept as beldars by the department from the year 1991 upto the year 1994. He admitted that when the aforesaid persons were kept as beldars, no notice of re-engagement was issued to the petitioner. Self stated that the petitioner himself had left the job. He specifically denied that illegal breaks had been given to the petitioner and that he had never abandoned the job.

13. It is an admitted case of the parties that the services of the petitioner were engaged in the month of September, 1988. Although, the respondent (RW1) in his examination- in-chief stated that the services of the petitioner had been engaged as a casual labourer, but he has not placed and exhibited on the file any document evidencing that the services of the petitioner were engaged as a casual worker from carrying out seasonal works only to his (petitioner's) knowledge. Then, while under cross-examination after admitting the suggestion of the petitioner that no notice for absenting himself from duty had been served upon the petitioner by the department, he (RW1) self stated that no such notice is given to a daily wager. Meaning thereby that the respondent admitted that the petitioner was employed as a daily wager. Then, placed on record by the petitioner is a copy of his mandays chart as Ex.PW1/B. Its perusal discloses that the petitioner had worked on muster roll basis. So, it can safely be held that the services of the petitioner had been engaged as a beldar by the respondent on daily wage basis.

14. The next point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

15. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. It has been

laid down by our own Hon'ble High Court in case titled as **Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875** that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as **State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286**, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Room Singh, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

16. It was contended by the learned counsel for the respondent that the petitioner had not worked for 240 days or more in a year preceding twelve calendar months from the date of his alleged termination, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had worked for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

17. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

18. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place on 26.03.2000. From the mandays chart Ex. PW1/B placed on the file, it becomes clear that the petitioner had not completed 240 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, i.e. 26th March, 2000, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

19. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of

workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

20. In the statement of claim, the petitioner has pleaded that at the time of termination of his services, persons junior to him were retained in service by the respondent. A detail of such persons has been given in para (III) of the statement of claim. The petitioner (PW1) also stated so in his examination-in-chief. Although, the respondent refuted such allegations and claimed that the principle of ‘last come first go’ had been adhered to but, however, during the cross-examination the respondent (RW1) admitted that S/Sh. Durga Dass, Ratto Ram, Jai Ram, Sipta Ram, Lajja Ram, Khalindu Ram etc. were kept as beldars by the department from the year 1991 uptil the year 1994.

21. There is no denial of the fact that no seniority list has been placed and exhibited on record nor any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondent at the time of the termination of his services. It is equally settled that admission is the best piece of evidence and the facts admitted need not be proved. As already mentioned, the respondent (RW1) has categorically admitted that S/Sh. Durga Dass, Ratto Ram, Jai Ram, Sipta Ram, Lajja Ram, Khalindu Ram etc. were kept as beldars by the department from the year 1991 uptil the year 1994. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner, as discussed above September, 1988 and as per the reference his services were finally terminated by the respondent on 26.3.2000. There is nothing on the record to show that the aforementioned workers were not retained by the respondent after the termination of the services of the petitioner. This indicates that persons junior to the petitioner are still serving the respondent. The latter, thus, has failed to adhere to the principle of ‘last come first go’. Retaining juniors at the cost of senior is nothing but unfair labour practice. Such being the situation, it can safely be held that the respondent has contravened the provisions of Section 25- G of the Act.

22. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

23. Faced with the situation, the learned counsel for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon’ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing- cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

24. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by

our own Hon'ble High Court in case titled as ***Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)***, will also be advantageous on this aspect of the matter.

25. In case titled as ***Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh*** reported in ***2013 (136) FLR 893 (SC)***, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as ***Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651***, by relying upon the cases of ***Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177*** and ***District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)***, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791***, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 368 days as a non-skilled worker. His services, as per the reference were disengaged in March, 2000 and he had raised the industrial dispute by issuance of demand notice after more than ***eleven years*** i.e. demand notice was given on 16.01.2012. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

26. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.3 is answered in the negative and decided against the respondent.

RELIEF

27. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award

be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 14th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT- CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref .No. : 115/2017
Date of Institution : 21.6.2017
Date of decision : 15.11.2019

Shri Shashi Chandel s/o Shri Jagdish Singh, r/o Village Salsi, P.O. Geharwin, Tehsil Jhanduta, District Bilaspur, H.P. *...Petitioner.*

Versus

1. The Employer/Manager, M/S G.V.K. E.M.R.I., J.P. Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Office)
2. The Employer, M/S Adecco India Private Limited, C-127, Basement Level, Satguru Infotech, Phase VIII, Industrial Area, Mohali (Area Office)
3. The Managing Director, M/S Adecco India Private Limited, No.2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore (Corporate Office) *...Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Umesh Nath Dhiman, Adv.
For Respondent No.1 : Sh. Rajat Sahotra, Adv.
For Respondent No. 2 & 3 : Sh. Manish Katoch, Adv.

AWARD/ORDER

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of services of Shri Shashi Chandel S/O Shri Jagdish Singh, R/O Village Salasi, P.O. Geharwin, Tehsil Jhanduta, District Bilaspur, H.P. w.e.f. 05-12-2011 by

(i) the Employer/Manager, M/S G.V.K E.M.R.I., J.P. Motors Building, Village Anji, Barog Bye Pass Solan, District Solan, H.P. (Work Office), (ii) the Employer M/S Adecco India Private Limited, C-127, Basement Level, Satguru Infotech, Phase VIII, Industrial Area Mohali (Area Office) (iii) the Managing Director, M/S Adecco India Private Limited, No.2, NAL Wind Tunnel Road, Murugeshpalya, Bangalore. (Corporate Office), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?"

2. Today again the statement of claim has not been filed by the petitioner despite being granted an exceptional opportunity. Learned counsel for the petitioner prays for more time for filing of the statement of claim on the ground that his client has not come to the Court today, being unwell. The same is opposed. No OPD Slip/medical certificate in support of illness (as claimed) has been produced. As already mentioned, this is an exceptional opportunity afforded to the petitioner for filing of the statement of claim, which he has failed to do so. This indicates that the claimant/petitioner is not interested to pursue the matter. In these circumstances, I am not inclined to grant the claimant/petitioner more time to file the statement of claim. His right to file the statement of claim is, accordingly, closed by the order of the Court.

3. For want of statement of claim/demand, it cannot be said that the termination of services of the petitioner by the respondent w.e.f. 5.12.2011 (as per the reference) is/was illegal and unjustified. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this order/award be sent to the appropriate Government for further necessary action at its end. Be consigned to the records after due completion.

Announced in the open Court today this 15th day of November, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 123/2016
Date of Institution : 04.3.2016
Date of Decision : 27.11.2019

Smt. Shanti Devi w/o Shri Sher Singh, r/o Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. ...Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D., Tehsil Pangi, District Chamba, H.P. ...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Shanti Devi W/O Shri Sher Singh, R/O Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 6.10.2011 regarding her alleged illegal termination of service during November, 1997 suffers from delay and laches? If not, Whether termination of the services of Smt. Shanti Devi W/O Shri Sher Singh, R/O Village and Post Office Dharwas, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, Killar Division, H.P.P.W.D. Killar, Tehsil Pangi, District Chamba, H.P. during November, 1997 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily wager on muster roll basis, without any appointment letter, in the year 1996. She had worked upto November, 1997 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The respondent had unlawfully terminated the services of the petitioner. She had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of ‘first come last go’. The names of the juniors who were retained in service by the respondent are Shri Jeet Singh and Shri Gian Chand. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands namely S/Sh./Smt. Gijja Ram, Laxmi Devi, Janto Devi, Sham Lal and Gautam Singh. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her, but without success. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1996 and she had worked as such till the year 1997. She had worked intermittently with the department and had left the job of her own sweet will. She had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. She had never approached

the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1997, she certainly would have raised an industrial dispute forthwith. It was only raised by her before the Labour Officer in the year 2011, *i.e.* after about 14 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for the back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 4.7.2018:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 06-10-2011 qua her termination of service during Nov., 1997 by respondent suffers from the vice of delay and laches as alleged? ...*OPP.*
2. Whether termination of the services of petitioner by the respondent during Nov., 1997 is/was legal and justified as alleged? ...*OPP.*
3. If issue no.1 is or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*
4. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Negative

Issue No.2 : No

Issue No.3 : Lump sum compensation of ₹ 25,000/-

Issue No.4 : Not pressed

Relief. : Petition is partly allowed awarding lump sum compensation of ₹ 25,000/- as per the operative part of the award.

REASONS FOR FINDINGS**ISSUES No.1 to 3**

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Shanti Devi examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed documents purportedly in support of her claim, which are Ex.PW1/B to PW1/C.

In the cross-examination, she admitted that she had worked as a daily waged employee from July, 1996 upto November, 1997 in the department. She denied that in between she had absented herself of her own sweet will. Further, she denied that she had not worked for 160 days in all the years to fulfill the criteria of tribal area. She also denied that she of her own had left the job after November, 1997. She feigned ignorance that Shri Sham Lal and Shri Gautam Singh were engaged on compassionate grounds. She owns land, which she cultivates. She admitted that she does not know Shri Sanjay Kumar. She denied that from November, 1997 upto October, 2011, she had not made any representation anywhere. She denied that she has filed a false claim.

11. Ex.PW1/B is the copy of seniority list of daily waged workers relating to Shri Jeet Singh and others.

12. Ex.PW1/C is the copy of working details pertaining to Shri Tek Chand and fourteen others.

13. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He also admitted that no appointment letter had been issued to the petitioner. It is denied that fictional breaks had been given to the petitioner so that she could not get regularized. He admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co- workers were re-engaged, the petitioner had not been called for work. He admitted that the petitioner had worked on muster roll.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the copy of year-wise mandays detail pertaining to Shri Jai Dass and sixteen others.

16. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex.RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of July, 1996, by the respondent and that she had worked as such intermittently upto November, 1997.

17. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or she herself had abandoned the job.

18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that she has left/abandoned the job. Mere statement of Shri Rajeev Kumar, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, ‘*animus*’ to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such ‘*animus*’ on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the affirmative in view of the material on record.

20. It was specifically claimed by the petitioner that she had worked for 160 days in each calendar. So was stated by her in her chief-examination, being in the shape of affidavit Ex.PW1/A. Although, it was suggested to her in her cross-examination that she had not worked for 160 days or more in any year, but she denied the same. It is by now well settled that a denied suggestion does not amount to proof. More so, in view of the mandays chart Ex.RW1/B, which is an admitted document on the part of the respondent. The said document is indicative of the fact that the petitioner had worked for 183 days from December, 1996 upto November, 1997 in the department. As per the reference, the services of the petitioner are alleged to have been illegally terminated during November, 1997. Section 25-F of the Act, which is alleged to have been violated by the respondent, reads thus:

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) *the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*
- (b) *the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”*

21. In view of the aforesaid provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month’s notice in writing indicating the reasons for retrenchment and the period of the notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice. The expression “continuous service” has been defined in Section 25-B of the Act. It reads thus:

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (1) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (2) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
 - (a) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
 - (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - (ii) *two hundred and forty days, in any other case....”*

22. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. Since, the petitioner is proved to have completed more than 160 days during the period of twelve calendar months anterior to the date of her retrenchment, her services could not have been terminated unless she was served with one month's notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. In the case on hand, there is not an iota of evidence on record to show that one month's notice in writing indicating the reasons for retrenchment of the petitioner/workman had been given and that she had been paid the compensation at the time of her retrenchment. RW1 Shri Rajeev Kumar nowhere stated in his substantive evidence that any notice of retrenchment had been given to the petitioner. It is also not his evidence that any retrenchment compensation had been paid to the petitioner. For these reasons, the final termination of the services of the petitioner by the respondent w.e.f. November, 1997 is patently wrong and incorrect.

23. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Jai Dass and sixteen others reveals that S/Sh. Parkash Chand, Hari Ram and Rattan Chand were appointed by the respondent in the year 1997. Of course, a note has been given on Ex. RW1/C that all these workers were engaged as per the orders of this Court/Tribunal, but that would not defeat the case of the petitioner that they all were junior to her. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is July, 1996. There is nothing on record to show that S/Sh. Parkash Chand, Hari Ram and Rattan Chand were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of ‘last come first go’. Retaining the juniors at the cost of senior is nothing but unfair labour practice.

25. It is also evident from the perusal of Ex.RW1/C that the services of Shri Jai Dass were engaged by the respondent in the year 1998, whereas Shri Tek Chand was appointed in the year 1999, S/Shri Sucheta Ram and Budhi Ram in the year 2001, Smt. Ram Dei in the year 2003, Shri Shyam Lal in the year 2006 and Shri Gautam Singh in the year 2007. This shows that new/fresh hands were engaged by the respondent after the services of the petitioner were disengaged. No cogent reason has been assigned by the respondent for doing so. There is nothing on the file to establish that at the time of engaging new/fresh hands or retaining the persons junior to the petitioner, an opportunity of re-employment was afforded to her (petitioner).

26. Such being the situation, I have no hesitation to conclude that the respondent has also contravened the provisions of Sections 25-G and 25-H of the Act.

27. Faced with the situation, the learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

28. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

29. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held

that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 312 days as a non-skilled worker. Her services, as per the reference were disengaged in November, 1997 and she had raised the industrial dispute by issuance of demand notice after more than *thirteen years* i.e. demand notice was given on 06.10.2011. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

30. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 2 and 3 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.1 is answered in the negative and decided against the respondent.

ISSUE NO. 4

31. Not pressed.

RELIEF

32. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹ 25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 27th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 372/2016

Date of Institution : 02.06.2016

Date of Decision : 28.11.2019

Shri Ram Singh s/o Shri Shiv Nath, r/o Village Kitwas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ...Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Killar Division, (Pangi), Tehsil Killar, District Chamba, H.P. ...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ram Singh, S/O Shri Shiv Nath, R/O Village Kitwas Hudan, P.O. Killar, Tehsil Pangi, District Chamba, H.P. during year 1997 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) Tehsil Killar, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute vide demand notice dated nil received in the Labour Office on 09/01/2013 after lapse of 8 years. If not, keeping in view delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/management?”

2. The case was listed for appearance of the legal representatives of the deceased petitioner (Sh. Ram Singh) for today but, however, neither they nor their counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the legal representatives of the deceased workman/petitioner had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for brevity sake). Section 2 (b) of the Act defines the Award as under:-

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee legal representatives of the deceased workman are present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the legal representative of the deceased workman are present, they are unwilling to file the statement of claim, adduce evidence or argue the case.

8. In the instant case, neither the legal representatives of the deceased workman nor their counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

9. As per the reference, it was required of the legal representatives of the deceased workman to plead and prove on record that the termination of the services of the deceased petitioner (Sh. Ram Singh) in the year 1997 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. However, there is neither any pleading nor any evidence to this effect on record on the part of the legal representatives of the deceased petitioner/workman. At the risk of repetition the legal representatives of the deceased petitioner/workman had not put in appearance before this Tribunal. In this view of the matter, the legal representatives of the deceased petitioner are not entitled to any relief. Accordingly, this reference is answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 461/2015

Date of Institution : 29.10.2015

Date of Decision : 28.11.2019

Miss Kishan Dei d/o Shri Shamal Dass, r/o Village and Post Office Sach, Tehsil Pangi,
District Chamba, H.P.*Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Killar Division, Killar, Tehsil Pangi, District Chamba,
H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Miss Kishan Dei D/O Shri Shamal Dass, R/O Village and Post Office Sach, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. vide demand notice dated 07.08.2012 regarding her alleged illegal termination of services during October, 1998 duffers from delay and latches? If not, Whether termination of the services of Miss Kishan Dei D/O Shri Shamal Dass, R/O Village and Post Office Sach, Tehsil Pangi, District Chamba, H.P. during October, 1998 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis, without any appointment letter, in the year

1994. She continuously worked with intermittent breaks upto October, 1998 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of 'first come last go'. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri/Smt. Chuni Lal, Tek Chand, Bhag Dei, Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who remained engaged till the year 1998. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since the petitioner had left the job of her own, there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1998, she certainly would have raised an industrial dispute forthwith, but the same was raised by her before the Labour Officer only in the year 2012, i.e. after about 14 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 17.2.2016:

1. Whether the industrial dispute raised by the petitioner vide demand notice dated 7.8.2012 qua her termination of service during October, 1998 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...OPP.

2. Whether termination of services of the petitioner by the respondent w.e.f. October, 1998 is/was illegal and unjustified as alleged? ...*OPP*.

3. If issue No. 2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.

4. Whether the claim petition is not maintainable in the present form? ...*OPR*.

Relief.

6. Arguments of the learned Deputy District Attorney for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Negative

Issue No.2 : Negative

Issue No.3 : Negative

Issue No.4 : Not pressed

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE No. 1

8. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

9. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2 and 3

10. Being interlinked and to avoid repetition, all these issues are taken up together for discussion and disposal.

11. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent during October, 1998 thereby violating the provisions of Sections 25-F & 25-G of the Act. It was asserted that the petitioner had been engaged on daily waged basis on muster roll as a beldar in the year 1994. It was also her claim that she had

completed 160 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

12. However, when the case was listed for adducing evidence by the petitioner for 6.11.2019, neither she nor her counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

13. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

14. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

15. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

16. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

17. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, she is unwilling to adduce evidence or argue her case.

18. In the instant case, neither the petitioner nor her counsel had put in appearance before this Tribunal on 6.11.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

19. Since, it is not disputed by the respondent that the services of the petitioner had been engaged on daily waged basis, so it was only required of the petitioner to establish on record, as per the reference, that the termination of her services in the year 1998 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but her allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by her. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondent.

ISSUE No. 4

20. Not pressed.

RELIEF

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 525/2015

Date of Institution : 21.11.2015

Date of Decision : 28.11.2019

Smt. Janti Devi w/o Shri Sehj Ram, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District
Chamba, H.P. *...Petitioner.*

Versus

The Executive Engineer, I.& P.H./H.P.P.W.D. Division Killar, Tehsil Pangi, District
Chamba, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the industrial dispute raised by the worker Smt. Janti Devi w/o Shri Sehj Ram, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. before the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. *vide* demand notice dated 05.04.2012 regarding her alleged illegal termination of services during September, 2004 suffers from delay and laches? If not, Whether termination of the services of Smt. Janti Devi W/O Shri Sehj Ram, r/o Village Ajog, P.O. Purthi, Tehsil Pangi, District Chamba, H.P. by the Executive Engineer, I.&P.H./H.P.P.W.D. Division, Killar, Tehsil Pangi, District Chamba, H.P. during September, 2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner, as it emerges from the statement of claim, is that she was appointed as daily waged beldar on muster roll basis, without any appointment letter, in the year 1997. She continuously worked with intermittent breaks upto October, 2004 with the respondent. Fictional breaks were given from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent had violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh had framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, the persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Shri/Smt. Bhag Dei, Jai Dass, Prakash Chand, Ram Dei, Dev Raj, Bameshwar Dutt and Raj Kumar. She was not given an opportunity of reemployment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on account of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1997 and who remained engaged till the year 2004. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming

to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since the petitioner had left the job of her own there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, she certainly would have raised an industrial dispute forthwith, but the same was raised by her before the Labour Officer only in the year 2012, i.e. after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 20.4.2016:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 05-04-2012 qua her termination of service during September, 2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ...*OPP*.
2. Whether termination of the services of petitioner by the respondent w.e.f. September, 2004 is/was illegal and unjustified as alleged? ...*OPP*.
5. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
6. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

6. Arguments of the learned Deputy District Attorney for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No. 1 : Negative

Issue No. 2 : Negative

Issue No. 3 : Negative

Issue No. 4 : Not pressed

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE No.1

8. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

9. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

ISSUES No. 2 and 3

10. Being interlinked and to avoid repetition, all these issues are taken up together for discussion and disposal.

11. The statement of claim has been filed by the petitioner claiming that her services were illegally and unjustifiably terminated by the respondent during September, 2004 thereby violating the provisions of Sections 25-F & 25-G of the Act. It was asserted that the petitioner had been engaged on daily waged basis on muster roll as a beldar in the year 1997. It was also her claim that she had completed 160 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of ‘last come first go’, as persons junior to the petitioner were retained. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

12. However, when the case was listed for adducing evidence by the petitioner for 6.11.2019, neither she nor her counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

13. It will be apt at this stage to take note of the relevant provisions of the Act. Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

14. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

15. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

16. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

17. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, she is unwilling to adduce evidence or argue her case.

18. In the instant case, neither the petitioner nor her counsel had put in appearance before this Tribunal on 6.11.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

19. Since, it is not disputed by the respondent that the services of the petitioner had been engaged on daily waged basis, so it was only required of the petitioner to establish on record, as per the reference, that the termination of her services in the year 2004 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but her allegations therein have remained a mere saying on record, as no evidence in support thereof has been led by her. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondent.

ISSUE No. 4

20. Not pressed.

RELIEF

21. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 94/2017

Date of Institution : 28.03.2017

Date of Decision : 28.11.2019

Shri Sharva Ram s/o Shri Suraj Bhan, r/o Village Thandal, P.O. Purthi, Tehsil Pangi,
District Chamba, H.P. *...Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D./I.&P.H. Division, Killar, Tehsil Pangi, District
Chamba, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Shri Ram Singh, s/o Shri Shiv Nath, r/o Village Kitwas Hudan, P.O. Killar, Tehsil Pangi, District Chamba, H.P. during year 1997 by the Executive Engineer, H.P.P.W.D. Killar Division, (Pangi) Tehsil Killar, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman, is legal and justified; whereas he has raised the dispute *vide* demand notice dated nil received in the Labour Office on 09-01-2013 after lapse of 8 years. If not, keeping in view delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis, without any appointment letter in the year 1994. He continuously worked with intermittent breaks upto October, 2004 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent has violated the principle of 'first come last go'. For the tribal area, the State of Himachal Pradesh has framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that he had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of his termination, persons junior to him were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Suraj Ram, Chunku, Budhi Ram, Dev Raj and Bameshwar Dutt. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1994 and who remained engaged till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will, and had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi Tehsil, as is evident from the mandays chart. It was also asserted that the services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since, the petitioner had left the job of his own, there was no need of serving a notice upon him or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute, but the same was raised by him before the Labour Officer only in the year 2012, i.e. after about 08 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 14.6.2018:

1. Whether termination of services of the petitioner by the respondent during September, 2004 is/was legal and justified as alleged? ...OPP.

2. If issue no.1 is proved in affirmative to what service benefits petitioner is entitled to? ...*OPP*.

3. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.

4. Whether the claim petition is bad on account of delay and laches as alleged? ...*OPR*.

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : Decided accordingly

Issue No.2 : Lump-sum compensation of ₹1,25,000/-

Issue No.3 : Not pressed

Issue No.4 : Negative

Relief. : Petition is partly allowed awarding lump-sum compensation of ₹1,25,000/- as per the operative part of the award.

REASONS FOR FINDINGS

ISSUES No.1, 2 and 4

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Sharva Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed documents purportedly in support of his claim, which is Ex. PW1/B and Mark-A.

In the cross-examination, he denied that he had worked intermittently from the year 1994 upto the year 2004. He also denied that he had been coming to work of his own sweet will. He further denied that he had left the job after the year 2004. Further, he denied that he had not worked for 160 days in all the years to fulfill the criteria of tribal area. He feigned ignorance that no persons junior to him were retained and that only those had been kept who had worked continuously. He owns half a bigha of land. He denied that he earns his livelihood by doing agricultural works. He also denied that he is making a phoney statement.

11. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

12. Mark-A is the copy of mandays chart relating to Sh. Suraj Ram & ors.

13. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He also admitted that no appointment letter had been issued to the petitioner. It is denied that fictional breaks had been given to the petitioner so that she could not get regularized. He admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again on work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work. He admitted that the petitioner had worked on muster roll.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/C is the mandays chart relating to the co-workers.

16. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex. RW1/B produced by the respondent is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of September, 1994, by the respondent and that he had worked as such intermittently uptil September, 2004.

17. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such '*animus*' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the negative in view of the material on record.

20. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

21. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of September, 2004. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 160 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Rather, it is evident from the mandays chart, Ex.RW1/B that he had only worked for 103 days in the immediate preceding year of his dismissal, which is below the required 160 days of working in the period of twelve calendar months preceding the date of dismissal. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

22. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

23. Ex. PW1/C, the mandays chart of the workers who had worked in HPPWD Division, Killar (Pangi) reveals that Shri Suraj Ram was appointed in the year 1997, while the services of Shri Chunku Ram, Shri Budhi Ram and Bameshwar Dutt were engaged in the years 1995, 2000 and 2001 respectively. At the cost of reiteration, I will like to add that the month and year of initial appointment of the petitioner as per Ex.RW1/B is September, 1994. There is nothing on record to show that the above named workers were senior to the petitioner. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

24. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Sections 25-G of the Act.

25. Faced with the situation, it was contended for the respondent that junior workers had been re-engaged and retained in service as per the orders of Labour Court-cum-Industrial Tribunal. No doubt, a note has been given in Ex. RW1/C that all the above named workers had been re-engaged as per the orders of Labour Court-cum-Industrial Tribunal, but merely because on the basis of orders of the Court the persons shown therein had been re-engaged does not defeat the claim of petitioner that they were junior to him. Even if the petitioner has failed to prove on record that he had worked for more than 160 days and that as per the policy framed by the Government of Himachal Pradesh from time to time, he was entitled for regularization of his service, but the respondent cannot be absolved from its accountability with regard to the provisions of Section 25-G of the Act, which as discussed above have been violated.

26. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondent. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

27. The learned Deputy District Attorney for the respondent then contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing- cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

28. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

29. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 1265 days as a non-skilled worker. His services, as per the reference were disengaged in September, 2004 and had raised the industrial dispute by issuance of demand notice after more than **seven years** i.e. demand notice was given on 18.4.2012. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump-sum compensation.

30. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹1,25,000/- (Rupees one lakh twenty five thousand only) would be an appropriate

relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

ISSUE NO. 3

31. Not pressed.

RELIEF

32. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹1,25,000/- (Rupees one lakh twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid term. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 28th day of November, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 06/2017

Date of Institution : 05.1.2017

Date of Decision : 29.11.2019

Ms. Reeta d/o Shri Nathu Ram, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. ...Petitioner.

Versus

The Executive Engineer, Killar Division, H.P.P.W.D. Killar (Pangi), District Chamba, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajeev Dharmani, Adv.

For the Respondent : Sh. Soham Kaushal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether the alleged termination of services of Ms. Reeta d/o Shri Nathu Ram, r/o Village Kawas, P.O. Killar, Tehsil Pangi, District Chamba, H.P. during November, 1995 by the Executive Engineer, Killar Division, H.P.P.W.D., Killar (Pangi), District Chamba, H.P. who had worked on daily wages as beldar and has raised her industrial dispute after more than 16 years vide demand notice dated 27-12-2011, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of more than 16 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that she was appointed as a daily waged beldar on muster roll basis, without any appointment letter in the year 1984. She continuously worked with intermittent breaks upto October, 1995 with the respondent. Fictional breaks were given to her from time to time so that 160 days could not be completed in each calendar year. It is also an averment that the respondent had not maintained the seniority and persons junior to the petitioner have been allowed to continue as beldars. The respondent has violated the principle of ‘first come last go’. For the tribal area, the State of Himachal Pradesh has framed a policy for regularization of daily waged workers who had worked for 160 days in each calendar year. It is further the case of the petitioner that the petitioner had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The breaks were to be counted as continuous service for the purpose of calculation of 160 days, as provided under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of her termination, persons junior to her were retained in service by the respondent. The names of the juniors, who were retained in service by the respondent are S/Sh. Suraj Ram, Chunku, Budhi Ram, Dev Raj and Bhameshwar Dutt. She was not given an opportunity of re-employment. From the date of her disengagement, she is unemployed. She had approached the respondent time and again to re-engage her services, but in vain. She is entitled to regularization after completion of eight years of service with all consequential benefits. She has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared and filed a reply taking preliminary objections regarding lack of maintainability and that the petition was bad on the ground of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the year 1989 and who remained engaged till the year 1995. She had worked intermittently with the department and had left the job of her own sweet will, and had been coming to work at her own convenience. No fictional breaks had ever been given to her by the respondent. She had not completed 160 days in any calendar year, as required for the tribal area of Pangti Tehsil, as is evident from the mandays chart. It was also asserted that the services of the

petitioner had never been terminated by the respondent. She had never approached the respondent and had left the work of her own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per the orders of the Labour Court. No other workmen junior to the petitioner had ever been retained in service by the respondent. Since the petitioner had left the job of her own there was no need of serving a notice upon her or to pay one month wages in lieu thereof. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 1995, she certainly would have raised an industrial dispute forthwith, but the same was raised by her before the Labour Officer only in the year 2011, i.e. after about 16 years, hence the same is bad due to delay and laches. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to her after her termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 21.11.2018:

1. Whether termination of the services of the petitioner by the respondent during Nov., 1995 is/was legal and justified as alleged? ...*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
3. Whether the petition is not maintainable in the present form as alleged? ...*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? ...*OPR*.

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : Lump sum compensation of ₹50,000/-

Issue No.3 : Not pressed

Issue No.4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of ₹50,000/- as per the operative part of the award.

REASONS FOR FINDINGS**ISSUES NO.1, 2 AND 4**

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Ms. Reeta examined herself as PW1 and filed her affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed documents purportedly in support of her claim, which are Ex.PW1/B & Ex.PW1/C.

In the cross-examination, she denied that she had worked intermittently from the year 1989 upto the year 1995. She denied that the department had not given fictional breaks to her. She also denied that no junior to her had been kept at work by the department. Further, she denied that she had not fulfilled the criteria of 160 days. She also denied that she had left the work in the year 1995. She works in MNREGA. Her husband is doing the days' drudgery. Her father-in-law owns a one bigha land. She denied that she is making a phoney statement.

11. Ex. PW1/B is the copy of demand notice served upon the respondent by the petitioner.

12. Ex. PW1/C is the copy of mandays chart relating to Sh. Suraj Ram & seventeen others.

13. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment letter had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again for work. Volunteered that, she had left the job of her own. He also admitted that as per the Court orders, when the co-workers were reengaged, the petitioner had not been called for work. He admitted that the petitioner had worked on muster roll.

14. Ex. RW1/B is the mandays chart relating to the petitioner.

15. Ex. RW1/B is the mandays chart relating to the co-workers.

16. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. Though, the petitioner claimed that she had worked as a daily waged beldar with the respondent from the year 1984, but she has not placed and exhibited on the file any document evidencing that she had worked under the respondent since the aforesaid year. Looking to the mandays chart, Ex.RW1/B, which has been placed and proved on record by the respondent, it can be gathered that the services of the petitioner had initially been engaged by the respondent in the month of July, 1989 and that she had worked with the respondent/department intermittently upto November, 1995.

17. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or she herself had abandoned the job, as it is claimed by the petitioner that her services had orally been terminated by the respondent, whereas the stand taken by the respondent is that after November, 1995, the petitioner had left the work of her own.

18. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, ‘*animus*’ to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such ‘*animus*’ on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

19. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the affirmative in view of the material on record.

20. It was specifically claimed by the petitioner that she had worked for 160 days in each calendar. So was stated by the petitioner in her chief-examination, being in the shape of affidavit Ex.PW1/A. Although, it was suggested to her in her cross-examination that she had not worked for 160 days or more in any year, but she denied the same. It is by now well settled that a denied suggestion does not amount to proof. More so, in view of the mandays chart Ex.RW1/B, the correctness of which is not disputed by the respondent. The said document is indicative of the fact that the petitioner had worked for 170.5 days from December, 1994 upto November, 1995 in the department. As per the reference, the services of the petitioner are alleged to have been illegally terminated during November, 1995. Section 25-F of the Act, which is alleged to have been violated by the respondent, reads thus:

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) *the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*
- (b) *the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days’ average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”*

21. In view of the aforesaid provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month’s notice in writing indicating the reasons for retrenchment and the period of the notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice. The expression “continuous service” has been defined in Section 25-B of the Act. It reads thus:

“25B. Definition of continuous service. For the purposes of this Chapter,-

- (3) *a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;*
- (4) *where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-*
- (b) *for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-*
- (i) *one hundred and ninety days in the case of a workman employed below ground in a mine; and*
- (ii) *two hundred and forty days, in any other case....”*

22. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. Since, the petitioner is proved to have completed more than 160 days during the period of twelve calendar months anterior to the date of her retrenchment, her services could not have been terminated unless she was served with one month's notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. In the case on hand, there is not an iota of evidence on record to show that one month's notice in writing indicating the reasons for retrenchment of the petitioner/workman had been given and that she had been paid the compensation at the time of her retrenchment. RW1 Shri Rajeev Kumar nowhere stated in his substantive evidence that any notice of retrenchment had been given to the petitioner. It is also not his evidence that any retrenchment compensation had been paid to the petitioner. For these reasons, the final termination of the services of the petitioner by the respondent w.e.f. November, 1995 is patently wrong and incorrect.

23. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and she belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

24. Ex. RW1/C, the mandays chart/seniority list of beldar category relating to Shri Suraj Ram and four others reveals that Sh. Bameshwar Dutt was appointed by the respondent in the year 1995. Of course, a note has been given on Ex. RW1/C this worker was engaged as per the orders of this Court/Tribunal, but that would not defeat the case of the petitioner that he was junior to her. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is July, 1989. There is nothing on record to show that Shri Bameshwar Dutt was senior to the petitioner. This indicates that a person junior to the petitioner is still serving the respondent/department. The latter has failed to adhere to the principle of ‘last come first go’. Retaining the junior at the cost of senior is nothing but unfair labour practice.

25. It is also evident from the perusal of Ex. RW1/C that the services of Sh. Suraj Ram were engaged in the year 1997, whereas Shri Chunku Ram was appointed in the year 2000 and

Sh. Budhi Ram in the year 2001. This shows that new/fresh hands were engaged by the respondent after the services of the petitioner were disengaged. No cogent reason has been assigned by the respondent for doing so. There is nothing on the file to establish that at the time of engaging new/fresh hands or retaining persons junior to the petitioner, an opportunity of re-employment was afforded to her (petitioner).

26. Such being the situation, I have no hesitation to conclude that the respondent has also contravened the provisions of Sections 25-G and 25-H of the Act.

27. Faced with the situation, the learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the relief(s) she has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing- cum- Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

28. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

29. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump

sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 443½ days as a non-skilled worker. Her services, as per the reference were disengaged in November, 1995 and she had raised the industrial dispute by issuance of demand notice after more than **sixteen years** i.e. demand notice was given on 27.12.2011. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

30. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹50,000/- (Rupees fifty thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from the date of Award till its realization. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

ISSUE NO. 3

31. Not pressed.

RELIEF

32. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹50,000/- (Rupees fifty thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 29th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 318/2016

Date of Institution : 26.5.2016

Date of Decision : 30.11.2019

Shri Vijay Kumar s/o Shri Hans Raj, c/o Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Ropar, Punjab ...*Petitioner.*

Versus

Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, VPO Nangal Khurad, Tehsil Haroli, District Una, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Vijay Kumar S/O Shri Hans Raj, C/O Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab w.e.f. 01- 07-2014 (as alleged by workman) by the Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, V.P.O. Nangal Khurad, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was appointed by the respondent/management as an Operator w.e.f. 11.02.2011 and had continuously worked as such till 30.6.2014. Thereafter his services were illegally and unlawfully terminated. The total strength of workers in the factory was more than 250 and without obtaining any permission from the appropriate authority as envisaged under Sections 25- M, 25-N and 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), the services of the petitioner were terminated. He was never served a three months notice as required under Section 25-N of the Act. Even no compensation was paid to him, as required under Section 25-F (b) of the Act. The management had deducted the EPF from his wages, but till date no account number has been allotted him. The action of the management amounts to unfair labour practice. At the time of his termination, he was drawing Rs.5,500/- per month. He is unemployed from the date of his termination. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages and all other consequential benefits.

3. The respondent had been duly served for 07.6.2019, but none had put in appearance on his behalf. The respondent for the reasons best known to him chose not to contest the reference. He was, thus, proceeded against *ex parte*.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim.

5. *Ex parte* arguments of the learned Authorized Representative for the petitioner heard and records gone through.

6. The petitioner, namely, Shri Vijay Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

7. The testimony of the petitioner goes to show that he had worked continuously with the respondent/management from 11.02.2011 till his termination on 30.6.2014. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also deposed by the petitioner that despite there being more than 250 workmen in the factory, no permission had been obtained from the appropriate authority before terminating his services. He was also not served with a three months notice, nor any retrenchment compensation had been paid to him. Though, EPF deductions had been made from the wages of the petitioner, but no account number had been allotted to him. He was drawing Rs.5,500/- per month on the date of his illegal termination. He is unemployed since the time of his illegal termination.

8. Nothing contrary has been pleaded and proved by the respondent/management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F and 25-N of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

9. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination i.e. on 01.7.2014 (as per the reference) till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 319/2016
Date of Institution : 26.5.2016
Date of Decision : 30.11.2019

Shri Sanjeev Dhiman s/o Shri Ram Parkash, c/o Shri R.K. Singh Parmar, General Secretary,
Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Ropar, Punjab ...*Petitioner.*

Versus

Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, VPO Nangal Khurad,
Tehsil Haroli, District Una, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sanjeev Dhiman S/O Shri Ram Parkash, C/O Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab w.e.f. 01-07-2014 (as alleged by workman) by the Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, V.P.O. Nangal Khurad, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was appointed by the respondent/management as a Quality Inspector *w.e.f.* 23.12.2011 and had continuously worked as such till 30.6.2014. Thereafter his services were illegally and unlawfully terminated. The total strength of workers in the factory was more than 250 and without obtaining any permission from the appropriate authority as envisaged under Sections 25-M, 25-N and 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), the services of the petitioner were terminated. He was never served a three months notice as required under Section 25-N of the Act. Even no compensation was paid to him, as required under Section 25-F (b) of the Act. The management had deducted the EPF from his wages, but till date no account number has been allotted him. The action of the management amounts to unfair labour practice. At the time of his termination, he was drawing Rs.8,400/- per month. He is unemployed from the date of his termination. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages and all other consequential benefits.

3. The respondent had been duly served for 07.6.2019, but none had put in appearance on his behalf. The respondent for the reasons best known to him chose not to contest the reference. He was, thus, proceeded against *ex parte*.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim.

5. *Ex parte* arguments of the learned Authorized Representative for the petitioner heard and records gone through.

6. The petitioner, namely, Shri Sanjeev Dhiman examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

7. The testimony of the petitioner goes to show that he had worked continuously with the respondent/management from 23.12.2011 till his termination on 30.6.2014. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also deposed by

the petitioner that despite there being more than 250 workmen in the factory, no permission had been obtained from the appropriate authority before terminating his services. He was also not served with a three months notice, nor any retrenchment compensation had been paid to him. Though, EPF deductions had been made from the wages of the petitioner, but no account number had been allotted to him. He was drawing Rs.8,400/- per month on the date of his illegal termination. He is unemployed since the time of his illegal termination.

8. Nothing contrary has been pleaded and proved by the respondent/management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F and 25-N of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

9. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination i.e. on 01.7.2014 (as per the reference) till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 292/2016

Date of Institution : 10.5.2016

Date of Decision : 30.11.2019

Shri Bhajan Singh s/o Shri Mangal Singh, c/o Shri R.K. Singh Parmar, General Secretary,
Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Ropar, Punjab

...*Petitioner.*

Versus

Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, VPO Nangal Khurad,
Tehsil Haroli, District Una, H.P.

...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Bhajan Singh S/O Shri Mangal Singh, C/O Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab w.e.f. 01-07-2014 (as alleged by workman) by the Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, V.P.O. Nangal Khurad, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was appointed by the respondent/management as a Quality Inspector w.e.f. 10.10.2010 and had continuously worked as such till 30.6.2014. Thereafter his services were illegally and unlawfully terminated. The total strength of workers in the factory was more than 250 and without obtaining any permission from the appropriate authority as envisaged under Sections 25-M, 25-N and 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), the services of the petitioner were terminated. He was never served a three months notice as required under Section 25-N of the Act. Even no compensation was paid to him, as required under Section 25-F (b) of the Act. The management had deducted the EPF from his wages, but till date no account number has been allotted him. The action of the management amounts to unfair labour practice. At the time of his termination, he was drawing Rs.9,400/- per month. He is unemployed from the date of his termination. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages and all other consequential benefits.

3. The respondent had been duly served for 07.6.2019, but none had put in appearance on his behalf. The respondent for the reasons best known to him chose not to contest the reference. He was, thus, proceeded against *ex parte*.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim.

5. *Ex parte* arguments of the learned Authorized Representative for the petitioner heard and records gone through.

6. The petitioner, namely, Shri Bhajan Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

7. The testimony of the petitioner goes to show that he had worked continuously with the respondent/management from 10.10.2010 till his termination on 30.6.2014. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also deposed by the petitioner that despite there being more than 250 workmen in the factory, no permission had been obtained from the appropriate authority before terminating his services. He was also not served with a three months notice, nor any retrenchment compensation had been paid to him. Though, EPF deductions had been made from the wages of the petitioner, but no account number had been allotted to him. He was drawing Rs.9,400/- per month on the date of his illegal termination. He is unemployed since the time of his illegal termination.

8. Nothing contrary has been pleaded and proved by the respondent/management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F and 25-N of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

9. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination i.e. on 01.7.2014 (as per the reference) till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 290/2016

Date of Institution : 10.5.2016

Date of Decision : 30.11.2019

Shri Sandeep Kumar s/o Shri Om Prakash, c/o Shri R.K. Singh Parmar, General Secretary,
Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Ropar, Punjab ...Petitioner.

Versus

Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, VPO Nangal Khurad,
Tehsil Haroli, District Una, H.P.Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sandeep Kumar S/O Shri Om Prakash, C/O Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L- 211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab w.e.f. 01-07-2014 (as alleged by workman) by the Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, V.P.O. Nangal Khurad, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was appointed by the respondent/management as an Operator w.e.f. 01.01.2011 and had continuously worked as such till 30.6.2014. Thereafter his services were illegally and unlawfully terminated. The total strength of workers in the factory was more than 250 and without obtaining any permission from the appropriate authority as envisaged under Sections 25-M, 25-N and 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), the services of the petitioner were terminated. He was never served a three months notice as required under Section 25-N of the Act. Even no compensation was paid to him, as required under Section 25-F (b) of the Act. The management had deducted the EPF from his wages, but till date no account number has been allotted him. The action of the management amounts to unfair labour practice. At the time of his termination, he was drawing Rs.6,380/- per month. He is unemployed from the date of his termination. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages and all other consequential benefits.

3. The respondent had been duly served for 07.6.2019, but none had put in appearance on his behalf. The respondent for the reasons best known to him chose not to contest the reference. He was, thus, proceeded against *ex parte*.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim.

5. *Ex parte* arguments of the learned Authorized Representative for the petitioner heard and records gone through.

6. The petitioner, namely, Shri Sandeep Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

7. The testimony of the petitioner goes to show that he had worked continuously with the respondent/management from 01.01.2011 till his termination on 30.6.2014. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also deposed by the petitioner that despite there being more than 250 workmen in the factory, no permission had been obtained from the appropriate authority before terminating his services. He was also not served with a three months notice, nor any retrenchment compensation had been paid to him. Though, EPF deductions had been made from the wages of the petitioner, but no account number had been allotted to him. He was drawing Rs.6,380/- per month on the date of his illegal termination. He is unemployed since the time of his illegal termination.

8. Nothing contrary has been pleaded and proved by the respondent/management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F and 25-N of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

9. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus

of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination i.e. on 01.7.2014 (as per the reference) till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 291/2016

Date of Institution : 10.5.2016

Date of Decision : 30.11.2019

Shri Bakshi Ram s/o Shri Mellu Ram, c/o Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab ...*Petitioner.*

Versus

Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, VPO Nangal Khurad, Tehsil Haroli, District Una, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Bakshi Ram s/o Shri Mellu Ram, c/o Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab w.e.f. 01- 07-2014 (as alleged by workman) by the Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, V.P.O. Nangal Khurad, Tehsil Haroli, District Una, H.P., without complying with the provisions of the

Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was appointed by the respondent/management as an Operator w.e.f. 01.3.2011 and had continuously worked as such till 30.6.2014. Thereafter his services were illegally and unlawfully terminated. The total strength of workers in the factory was more than 250 and without obtaining any permission from the appropriate authority as envisaged under Sections 25- M, 25-N and 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short), the services of the petitioner were terminated. He was never served a three months notice as required under Section 25-N of the Act. Even no compensation was paid to him, as required under Section 25-F (b) of the Act. The management had deducted the EPF from his wages, but till date no account number has been allotted him. The action of the management amounts to unfair labour practice. At the time of his termination, he was drawing Rs.4,500/- per month. He is unemployed from the date of his termination. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages and all other consequential benefits.

3. The respondent had been duly served for 07.6.2019, but none had put in appearance on his behalf. The respondent for the reasons best known to him chose not to contest the reference. He was, thus, proceeded against *ex parte*.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim.

5. *Ex parte* arguments of the learned Authorized Representative for the petitioner heard and records gone through.

6. The petitioner, namely, Shri Bakshi Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

7. The testimony of the petitioner goes to show that he had worked continuously with the respondent/management from 01.3.2011 till his termination on 30.6.2014. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also deposed by the petitioner that despite there being more than 250 workmen in the factory, no permission had been obtained from the appropriate authority before terminating his services. He was also not served with a three months notice, nor any retrenchment compensation had been paid to him. Though, EPF deductions had been made from the wages of the petitioner, but no account number had been allotted to him. He was drawing Rs.4,500/- per month on the date of his illegal termination. He is unemployed since the time of his illegal termination.

8. Nothing contrary has been pleaded and proved by the respondent/management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F and 25-N of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

9. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination i.e. on 01.7.2014 (as per the reference) till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 315/2016

Date of Institution : 26.5.2016

Date of Decision : 30.11.2019

Shri Madan Lal s/o Shri Joginder Singh, c/o Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Ropar, Punjab ...*Petitioner.*

Versus

Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, VPO Nangal Khurad, Tehsil Haroli, District Una, H.P.*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Madan Lal S/O Shri Joginder Singh, C/O Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L- 211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab w.e.f. 01-07-2014 (as alleged by workman) by the Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, V.P.O. Nangal Khurad, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was appointed by the respondent/management as an Operator w.e.f. 19.10.2010 and had continuously worked as such till 30.6.2014. Thereafter his services were illegally and unlawfully

terminated. The total strength of workers in the factory was more than 250 and without obtaining any permission from the appropriate authority as envisaged under Sections 25- M, 25-N and 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short), the services of the petitioner were terminated. He was never served a three months notice as required under Section 25-N of the Act. Even no compensation was paid to him, as required under Section 25-F (b) of the Act. The management had deducted the EPF from his wages, but till date no account number has been allotted him. The action of the management amounts to unfair labour practice. At the time of his termination, he was drawing Rs.7,150/- per month. He is unemployed from the date of his termination. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages and all other consequential benefits.

3. The respondent had been duly served for 07.6.2019, but none had put in appearance on his behalf. The respondent for the reasons best known to him chose not to contest the reference. He was, thus, proceeded against *ex parte*.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim.

5. *Ex parte* arguments of the learned Authorized Representative for the petitioner heard and records gone through.

6. The petitioner, namely, Shri Madan Lal examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

7. The testimony of the petitioner goes to show that he had worked continuously with the respondent/management from 19.10.2010 till his termination on 30.6.2014. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also deposed by the petitioner that despite there being more than 250 workmen in the factory, no permission had been obtained from the appropriate authority before terminating his services. He was also not served with a three months notice, nor any retrenchment compensation had been paid to him. Though, EPF deductions had been made from the wages of the petitioner, but no account number had been allotted to him. He was drawing Rs.7,150/- per month on the date of his illegal termination. He is unemployed since the time of his illegal termination.

8. Nothing contrary has been pleaded and proved by the respondent/management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F and 25-N of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

9. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination i.e. on 01.7.2014 (as per the reference) till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 320/2016

Date of Institution : 26.5.2016

Date of Decision : 30.11.2019

Shri Sanjeev Rana s/o Shri Ranjeet Singh, c/o Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab ...*Petitioner.*

Versus

Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, VPO Nangal Khurad, Tehsil Haroli, District Una, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Sanjeev Rana S/O Shri Ranjeet Singh, C/O Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab w.e.f. 01-07-2014 (as alleged by workman) by the Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, V.P.O. Nangal Khurad, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was appointed by the respondent/management as an Operator w.e.f. 02.3.2011 and had continuously worked as such till 30.6.2014. Thereafter his services were illegally and unlawfully terminated. The total strength of workers in the factory was more than 250 and without obtaining any permission from the appropriate authority as envisaged under Sections 25- M, 25-N and 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), the services of the petitioner were terminated. He was never served a three months notice as required under Section 25-N of the Act. Even no compensation was paid to him, as required under Section 25-F (b) of the Act. The management had deducted the EPF from his wages, but till date no account number has been allotted him. The action of the management amounts to unfair labour practice. At the time of his termination, he was drawing Rs.6,000/- per month. He is unemployed from the date of his termination. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages and all other consequential benefits.

3. The respondent had been duly served for 07.6.2019, but none had put in appearance on his behalf. The respondent for the reasons best known to him chose not to contest the reference. He was, thus, proceeded against *ex parte*.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim.

5. *Ex parte* arguments of the learned Authorized Representative for the petitioner heard and records gone through.

6. The petitioner, namely, Shri Sanjeev Rana examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

7. The testimony of the petitioner goes to show that he had worked continuously with the respondent/management from 02.3.2011 till his termination on 30.6.2014. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also deposed by the petitioner that despite there being more than 250 workmen in the factory, no permission had been obtained from the appropriate authority before terminating his services. He was also not served with a three months notice, nor any retrenchment compensation had been paid to him. Though, EPF deductions had been made from the wages of the petitioner, but no account number had been allotted to him. He was drawing Rs.6,000/- per month on the date of his illegal termination. He is unemployed since the time of his illegal termination.

8. Nothing contrary has been pleaded and proved by the respondent/management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F and 25-N of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

9. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination i.e. on 01.7.2014 (as per the reference) till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 316/2016

Date of Institution : 26.5.2016

Date of Decision : 30.11.2019

Shri Kamal Kumar s/o Shri Tilak Raj, c/o Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Ropar, Punjab ...*Petitioner*

Versus

Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, VPO Nangal Khurad, Tehsil Haroli, District Una, H.P. ...*Respondent*.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Kamal Kumar S/O Shri Tilak Raj, C/O Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab w.e.f. 01- 07-2014 (as alleged by workman) by the Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, V.P.O. Nangal Khurad, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was appointed by the respondent/management as an Operator w.e.f. 19.10.2010 and had continuously worked as such till 30.6.2014. Thereafter his services were illegally and unlawfully terminated. The total strength of workers in the factory was more than 250 and without obtaining any permission from the appropriate authority as envisaged under Sections 25- M, 25-N and 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), the services of the petitioner were terminated. He was never served a three months notice as required under Section 25-N of the Act. Even no compensation was paid to him, as required under Section 25-F (b) of the Act. The management had deducted the EPF from his wages, but till date no account number has been allotted him. The action of the management amounts to unfair labour practice. At the time of his termination, he was drawing Rs.7,150/- per month. He is unemployed from the date of his termination. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages and all other consequential benefits.

3. The respondent had been duly served for 07.6.2019, but none had put in appearance on his behalf. The respondent for the reasons best known to him chose not to contest the reference. He was, thus, proceeded against *ex parte*.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim.

5. *Ex parte* arguments of the learned Authorized Representative for the petitioner heard and records gone through.

6. The petitioner, namely, Shri Kamal Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

7. The testimony of the petitioner goes to show that he had worked continuously with the respondent/management from 19.10.2010 till his termination on 30.6.2014. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also deposed by the petitioner that despite there being more than 250 workmen in the factory, no permission had been obtained from the appropriate authority before terminating his services. He was also not served with a three months notice, nor any retrenchment compensation had been paid to him. Though, EPF deductions had been made from the wages of the petitioner, but no account number had been allotted to him. He was drawing Rs.7,150/- per month on the date of his illegal termination. He is unemployed since the time of his illegal termination.

8. Nothing contrary has been pleaded and proved by the respondent/management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F and 25-N of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

9. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination i.e. on 01.7.2014 (as per the reference) till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 321/2016

Date of Institution : 26.5.2016

Date of Decision : 30.11.2019

Shri Roshan Lal s/o Shri Moola Singh, c/o Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Ropar, Punjab ...*Petitioner.*

Versus

Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, VPO Nangal Khurad, Tehsil Haroli, District Una, H.P. ...*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Roshan Lal S/O Shri Moola Singh, C/O Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L- 211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab w.e.f. 01-07-2014 (as alleged by workman) by the Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, V.P.O. Nangal Khurad, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was appointed by the respondent/management as an Operator w.e.f. 19.10.2010 and had continuously worked as such till 30.6.2014. Thereafter his services were illegally and unlawfully terminated. The total strength of workers in the factory was more than 250 and without obtaining any permission from the appropriate authority as envisaged under Sections 25- M, 25-N and 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), the services of the petitioner were terminated. He was never served a three months notice as required under Section 25-N of the Act. Even no compensation was paid to him, as required under Section 25-F (b) of the Act. The management had deducted the EPF from his wages, but till date no account number has been allotted him. The action of the management amounts to unfair labour practice. At the time of his termination, he was drawing Rs.7,150/- per month. He is unemployed from the date of his termination. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages and all other consequential benefits.

3. The respondent had been duly served for 07.6.2019, but none had put in appearance on his behalf. The respondent for the reasons best known to him chose not to contest the reference. He was, thus, proceeded against *ex parte*.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim.

5. *Ex parte* arguments of the learned Authorized Representative for the petitioner heard and records gone through.

6. The petitioner, namely, Shri Roshan Lal examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

7. The testimony of the petitioner goes to show that he had worked continuously with the respondent/management from 19.10.2010 till his termination on 30.6.2014. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also deposed by the petitioner that despite there being more than 250 workmen in the factory, no permission had

been obtained from the appropriate authority before terminating his services. He was also not served with a three months notice, nor any retrenchment compensation had been paid to him. Though, EPF deductions had been made from the wages of the petitioner, but no account number had been allotted to him. He was drawing Rs.7,150/- per month on the date of his illegal termination. He is unemployed since the time of his illegal termination.

8. Nothing contrary has been pleaded and proved by the respondent/management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F and 25-N of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

9. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination i.e. on 01.7.2014 (as per the reference) till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 317/2016

Date of Institution : 26.5.2016

Date of Decision : 30.11.2019

Shri Ramesh Chand s/o Shri Jeevan Lal, c/o Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Ropar, Punjab *...Petitioner.*

Versus

Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, VPO Nangal Khurad, Tehsil Haroli, District Una, H.P. *...Respondent.*

Reference under Section 10 (1) of the Industrial

Disputes Act, 1947.

For the Petitioner : Sh. R.K. Singh Parmar, AR.

For the Respondent : Respondent already *ex parte*

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether termination of the services of Shri Ramesh Chand S/O Shri Jeevan Lal, C/O Shri R.K. Singh Parmar, General Secretary, Pb. INTUC, L-211, Brari, P.O. Partap Nagar, Tehsil Nangal, District Roper, Punjab w.e.f. 01-07-2014 (as alleged by workman) by the Managing Director, M/S Arvind Talwar Machine Tools (P) Limited, V.P.O. Nangal Khurad, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. In furtherance to the reference it is averred by the petitioner in the statement of claim that he was appointed by the respondent/management as an Operator w.e.f. 9.11.2010 and had continuously worked as such till 30.6.2014. Thereafter his services were illegally and unlawfully terminated. The total strength of workers in the factory was more than 250 and without obtaining any permission from the appropriate authority as envisaged under Sections 25-M, 25-N and 25-O of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short), the services of the petitioner were terminated. He was never served a three months notice as required under Section 25-N of the Act. Even no compensation was paid to him, as required under Section 25-F (b) of the Act. The management had deducted the EPF from his wages, but till date no account number has been allotted him. The action of the management amounts to unfair labour practice. At the time of his termination, he was drawing Rs.8,300/- per month. He is unemployed from the date of his termination. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages and all other consequential benefits.

3. The respondent had been duly served for 07.6.2019, but none had put in appearance on his behalf. The respondent for the reasons best known to him chose not to contest the reference. He was, thus, proceeded against *ex parte*.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim.

5. *Ex parte* arguments of the learned Authorized Representative for the petitioner heard and records gone through.

6. The petitioner, namely, Shri Ramesh Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

7. The testimony of the petitioner goes to show that he had worked continuously with the respondent/management from 09.11.2010 till his termination on 30.6.2014. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also deposed by the petitioner that despite there being more than 250 workmen in the factory, no permission had been obtained from the appropriate authority before terminating his services. He was also not served with a three months notice, nor any retrenchment compensation had been paid to him. Though, EPF deductions had been made from the wages of the petitioner, but no account number had been allotted to him. He was drawing Rs.8,300/- per month on the date of his illegal termination. He is unemployed since the time of his illegal termination.

8. Nothing contrary has been pleaded and proved by the respondent/management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F and 25-N of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

9. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination i.e. on 01.7.2014 (as per the reference) till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 450/2016

Date of Institution : 20.8.2016

Date of Decision : 30.11.2019

Shri Maghu Ram s/o Shri Prabhdiyal, r/o Village Ghissal, P.O. Sach, Tehsil Pangi, District
Chamba, H.P. *...Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P.
...Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Soham Kaushal, Dy.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Maghu Ram S/O Sh. Prabhdiyal, Village Ghissal, P.O. Sach, Tehsil Pangi, Distt. Chamba H.P. from 8/2003 by the Executive Engineer, HPPWD Division, Killar Tehsil Pangi District Chamba, H.P who had worked as

beldar on daily wages basis only for 394.5 days during the year 5/1996 to 8/2003 and has raised his industrial dispute vide demand notice dated 27/8/2012 after more than 8 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 8 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the year 1994. He had worked upto August, 2003 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of 'first come last go'. The names of the juniors who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but without success. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1996 and he had worked as such till the year 2003. He had worked intermittently with the department and had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2003, he certainly would have raised an industrial dispute forthwith. It was only raised by him before the Labour Officer in the year 2012, i.e. after about 09 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 21.11.2018:

1. Whether termination of the services of the petitioner by the respondent during August, 2003 is/was legal and justified as alleged? ...OPP.

2. If issue no.1 is proved in affirmative to what service benefits petitioner is entitled to? ...*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? ...*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? ...*OPR*.

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

- | | |
|------------|--|
| Issue No.1 | : No |
| Issue No.2 | : Lump sum compensation of ₹25,000/- |
| Issue No.3 | : Not pressed |
| Issue No.4 | : Negative |
| Relief. | : Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award. |

REASONS FOR FINDINGS

ISSUES No. 1, 2 and 4

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Maghu Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed documents purportedly in support of his claim, which are Ex.PW1/B to Ex.PW1/L.

In the cross-examination, he denied that he had worked with the department intermittently from the year 1994 upto the year 2003. He also denied that he had been coming to work of his own sweet will. He further denied that he had left the work of his own after the year 2003. He denied that neither he was removed nor given fictional breaks by the department. He also denied that he had not worked for 160 days in all the years to fulfill the criteria. He specifically denied that no junior to him was kept at work by the department. He owns one bigha of land. He specifically denied that he is earning his livelihood by doing agricultural chores. He also denied that he is making a phoney statement.

11. Ex. PW1/B is the year-wise mandays chart relating to Smt. Chhin Dei and three others.

12. Ex. PW1/C is the copy of seniority/regularization of daily waged workers relating to S/Shri Dev Raj and Goutam Singh.

13. Ex. PW1/D is the copy of regularization of daily waged workers relating to Shri Tek Chand and four others.

14. Ex. PW1/E is the copy of year-wise mandays detail relating to Shri Shiv Kumar and thirteen others.

15. Exts. PW1/F to I are the copies of seniority list in respect of Shri Sucheta Ram and others.

16. Exts. PW1/J to L are the year-wise mandays chart relating to Shri Chunku Ram and others working under the respondent.

17. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment letter had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again for work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work. He admitted that the petitioner had worked on muster roll.

18. Ex. RW1/B is the mandays chart relating to the petitioner.

19. Ex. RW1/C is the mandays chart relating to the co-workers.

20. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. Though, the petitioner claimed that he had worked as a daily waged beldar with the respondent from the year 1994, but he has not placed and exhibited on the file any document evidencing that he had worked under the respondent since the aforesaid year. Looking to the mandays chart Ex. RW1/B, which has been placed and proved on record by the respondent, it can be gathered that the services of the petitioner had initially been engaged by the respondent in the month of May, 1996 and that he had worked as such intermittently upto August, 2003.

21. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

22. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a

fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

23. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

24. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

25. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of August, 2003. From the mandays chart Ex. RW1/B placed on the file, it becomes clear that the petitioner had not completed 160 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, i.e. August, 2003, as envisaged under Section 25-B of the Act. It has been laid down by the Hon'ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

26. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

27. Ex. PW1/B, the year-wise mandays chart of beldar category relating to Smt. Chhin Dei and three others, reveals S/Smt. Chhin Dei, Bhag Dei, Sur Dei and Shyami were appointed by the respondent in the year 2000. As per Ex.PW1/D the services of Shri Tek Chand were engaged on 1.6.1999 and that of Shri Shyam Lal on 1/6/1998. A perusal of Ex. PW1/E discloses that the names of persons figuring at serial nos. 1 to 11 were engaged in the year 1997 or thereafter till the year 2001. Ex. PW1/F, Ex.PW1/G, Ex.PW1/H and Ex.PW1/I i.e. seniority lists in respect of S/Sh. Sucheta Ram, Sham Lal, Hari Ram and Tek Chand reveal that they all were appointed in the years 1997 and 1998. Ex.PW1/J to Ex.PW1/L are the mandays chart relating to S/Shri Chunku Ram,

Mohan Lal and Suraj Ram, the beldars. They were also appointed by the department in the years 2000, 1998 and 1997 respectively. Ex.RW1/C, i.e. year- wise mandays detail of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that the names of persons figuring at serial nos. 1 to 3, 5 to 12 and 14 to 22 were engaged from the year 1997 and thereafter. Of course, a note has been given on Ex. RW1/C that most of the workers whose names find mention therein were engaged as per the orders of this Court/Tribunal, but that would not defeat the claim of the petitioner that they all were junior to him. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is May, 1996. There is nothing on record to show that all the above mentioned persons were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

28. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Section 25-G of the Act.

29. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case. Faced with the situation, it was contended for the petitioner that Shri Shyam Lal had been appointed by the respondent/department in the year 2006, whereas the services of Shri Gautam Singh were engaged in the year 2007. So, they can be said to be new/fresh hands. This cannot be accepted. There is a note in Ex.RW1/C that S/Shri Sham Lal and Gautam Singh had been appointed on compassionate grounds.

30. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

31. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

32. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute

before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 394½ days as a non-skilled worker. His services, as per the reference were disengaged in August, 2003 and he had raised the industrial dispute by issuance of demand notice after more than **eight years** i.e. demand notice was given on 27.8.2012. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

33. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

ISSUE NO.3

34. Not pressed.

RELIEF

35. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 573/2016
Date of Institution : 24.8.2016
Date of Decision : 30.11.2019

Shri Karam Lal s/o Shri Dharam Chand, r/o Village Leo, P.O. Sahali Tehsil Pangi, District Chamba, H.P. *...Petitioner.*

Versus

The Executive Engineer, H.P.P.W.D. Division Killar, Tehsil Pangi, District Chamba, H.P. *...Respondent*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. I.S. Jaryal, AR

For the Respondent : Sh. Soham Kaushal, Dy. DA

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether alleged termination of services of Sh. Karam Lal S/O Sh. Dharam Chand Village Leo, P.O. Sahali, Tehsil Pangi, Distt. Chamba H.P. from 7/2004 by the Executive Engineer, HPPWD Division, Killar (Pangi) Tehsil Pangi District Chamba, H.P. who had worked as beldar on daily wages basis only for 227.5 days during the year 1991 to 2004 and has raised his industrial dispute vide demand notice dated 27/8/2012 after more than 7 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 7 years in raising the industrial Dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the year 1991. He had worked upto July,

2004 with the respondent. Fictional breaks were given to him from time to time so that 160 days could not be completed in each calendar year. For the tribal area, the State of Himachal Pradesh has fixed a criteria of 160 days for the purpose of continuous service under Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The respondent had unlawfully terminated the services of the petitioner. He had been retrenched without giving notice of retrenchment and compensation in lieu thereof. The respondent had not followed the principle of 'first come last go'. The names of the juniors who were retained in service by the respondent are Shri Hukkam Chand and twenty seven others. After the termination of the services of the petitioner, the respondent had appointed new/fresh hands. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He had approached the respondent time and again to re-engage him, but without success. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G and 25-H of the Act and Articles 14 and 16 of the Constitution of India. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petition is bad on account of delay and laches. The contents of the petition were denied on merits. It is asserted that the petitioner was engaged as a daily waged beldar in the year 1991 and he had worked as such till the year 2004. He had worked intermittently with the department and had left the job of his own sweet will. He had been coming to work at his own convenience. No fictional breaks had ever been given to him by the respondent. He had not completed 160 days in any calendar year, as required for the tribal area of Pangi. The services of the petitioner had never been terminated by the respondent. He had never approached the respondent and had left the work of his own sweet will and volition. Regarding the allegation of engagement of persons junior to the petitioner, it was asserted that they were appointed as per orders of the Labour Court and as harness cases. No workman junior to the petitioner had ever been retained in service by the respondent. The respondent had not violated the principle of 'last come first go'. If the petitioner had been terminated in the year 2004, he certainly would have raised an industrial dispute forthwith. It was only raised by him before the Labour Officer in the year 2012, i.e. after about 08 years. Since the services of the petitioner had not been terminated by the respondent, the question of issuance of notice or wages in lieu thereof did not arise and there was also no necessity to charge-sheet or issue any notice to him after his termination. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled to back wages. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal vide order dated 21.11.2018:

1. Whether termination of the services of the petitioner by the respondent from July, 2004 is/was legal and justified as alleged? ...*OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP.*
3. Whether the petition is not maintainable in the present form as alleged? ...*OPR.*
4. Whether the claim petition is bad on account of delay and laches on the part of the petitioner as alleged? ...*OPR.*

Relief.

6. Thereafter, evidence was led by the parties to the lis in support of the issues so framed.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1 : No

Issue No.2 : Lump sum compensation of ₹25,000/-

Issue No.3 : Not pressed

Issue No.4 : Negative

Relief. : Petition is partly allowed awarding lump sum compensation of ₹25,000/- as per the operative part of the award.

REASONS FOR FINDINGS**ISSUES No. 1, 2 and 4**

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Karam Lal examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed documents purportedly in support of his claim, which are Ex.PW1/B to Ex.PW1/L.

In the cross-examination, he denied that he had worked with the department intermittently from the year 1991 upto the year 2004. He also denied that he had been coming to work of his own sweet will. He further denied that he had left the work of his own after the year 2004. He denied that neither he was removed nor given fictional breaks by the department. He also denied that he had not worked for 160 days in all the years to fulfill the criteria. He specifically denied that no junior to him was kept at work by the department. He owns five biswas of land. He also works under MNREGA. He denied that he is making a phoney statement.

11. Ex. PW1/B is the year-wise mandays chart relating to Smt. Chhin Dei and three others.

12. Ex. PW1/C is the copy of seniority/regularization of daily waged workers relating to S/Shri Dev Raj and Goutam Singh.

13. Ex. PW1/D is the copy of regularization of daily waged workers relating to Shri Tek Chand and four others.

14. Ex. PW1/E is the copy of year-wise mandays detail relating to Shri Shiv Kumar and thirteen others.

15. Exts. PW1/F to I are the copies of seniority list in respect of Shri Sucheta Ram and others.

16. Exts. PW1/J to L are the year-wise mandays chart relating to Shri Chunku Ram and others working under the respondent.

17. Conversely, Shri Rajeev Kumar, Executive Engineer, HPPWD, Division Killar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that the petitioner was employed as a daily waged worker in the department. He was also categorical that no appointment letter had been issued while engaging the petitioner. He also clearly admitted that during the period of work, no departmental inquiry had been initiated against the petitioner. He also clearly admitted that as per the record, the petitioner had never been called again for work. Volunteered that, he had left the job of his own. He also admitted that as per the Court orders, when the co-workers were re-engaged, the petitioner had not been called for work. He admitted that the petitioner had worked on muster roll.

18. Ex. RW1/B is the mandays chart relating to the petitioner.

19. Ex. RW1/C is the mandays chart relating to the co-workers.

20. It is the admitted case of the parties that the services of the petitioner were engaged by the respondent/department. The mandays chart Ex. RW1/B is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of July, 1991 by the respondent and that he had worked as such intermittently upto July, 2004.

21. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job.

22. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. It has been laid down by our own Hon'ble High Court in case titled as *Narain Singh vs. The State of Himachal Pradesh & Ors., 2016 (3) Him L.R. 1875* that voluntarily abandonment of work by a workman is required to be established by way of cogent and reliable evidence by the employer. Similarly, in case titled as *State of Himachal Pradesh & another vs. Shri Partap Singh, 2017 (1) Him L.R. 286*, it has been held by our own Hon'ble High Court that abandonment is not to be lightly presumed, but it has to be unequivocally proved by the employer. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Shri Rajeev Kumar, (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. Then, 'animus' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence of any such 'animus' on the part of the petitioner is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established.

23. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the negative in view of the material on record.

24. Section 25-B of the Act defines “continuous service”. In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. However, the number of minimum requisite days specified for the tribal area of Pangi Sub-Division in Chamba District is 160 days. The burden of proof is on the petitioner to show that he had worked for 160 days in preceding twelve calendar months prior to his alleged retrenchment. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon’ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

25. Applying the principles laid down in the above case by the Hon’ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 160 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the month of July, 2004. From the mandays chart Ex. RW1/B placed on the file, it becomes clear that the petitioner had not completed 160 days of continuous work in a block of twelve calendar months preceding the date/month of his retrenchment, i.e. July, 2004, as envisaged under Section 25-B of the Act. It has been laid down by the Hon’ble Supreme Court in case titled as **Mohd. Ali vs. State of Himachal Pradesh and Ors., (2019) 1 SCC (L&S) 138** that when the workman had not worked for the required 240 days of working in the period of twelve calendar months preceding the date of dismissal, he is not entitled to take the benefits of the provisions of Section 25-F of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

26. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

27. Ex. PW1/B, the year-wise mandays chart of beldar category relating to Smt. Chhin Dei and three others, reveals S/Smt. Chhin Dei, Bhag Dei, Sur Dei and Shyami were appointed by the respondent in the year 2000. As per Ex.PW1/D the services of Shri Tek Chand were engaged on 1.6.1999 and that of Shri Baldev on 1.6.1995, of S/Shri Amar Nath and Balak Ram on 1.5.1996 and that of Shri Shyam Lal on 1.6.1998. A perusal of Ex. PW1/E discloses that the names of persons figuring at serial nos. 1 to 11 were engaged in the year 1997 or thereafter till the year 2001. Ex. PW1/F, Ex.PW1/G, Ex.PW1/H and Ex.PW1/I i.e. seniority lists in respect of S/Sh. Sucheta Ram, Shyam Lal, Hari Ram and Tek Chand reveal that they all were appointed in the years 1997 and 1998. Ex.PW1/J to Ex.PW1/L are the mandays chart relating to S/Shri Chunku Ram, Mohan Lal and Suraj Ram, the beldars. They were also appointed by the department in the years 2000, 1998 and 1997 respectively. Ex.RW1/C, i.e. year-wise mandays detail of beldar category relating to Shri Hukkam Chand and twenty six others, reveals that the names of persons figuring at serial nos. 1 to 22 & 24 were engaged from the year 1997 and thereafter. Of course, a note has been given on Ex. RW1/C that most of the workers whose names find mention therein were engaged as per the orders of this Court/Tribunal, but that would not defeat the claim of the petitioner that they all were junior to him. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. RW1/B is July, 1991. There is nothing on record to show that all the above mentioned persons were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter had failed to adhere to the principle

of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him.

28. Such being the situation, I have no hesitation to conclude that respondent has contravened the provisions of Section 25-G of the Act.

29. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are also not attracted in this case. Faced with the situation, it was contended for the petitioner that Shri Shyam Lal had been appointed by the respondent/department in the year 2006, whereas the services of Shri Gautam Singh were engaged in the year 2007. So, they can be said to be new/fresh hands. This cannot be accepted. There is a note in Ex.RW1/C that S/Shri Sham Lal and Gautam Singh had been appointed on compassionate grounds.

30. The learned Deputy District Attorney for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

31. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

32. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that

where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as ***State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791***, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner had worked with the respondent for 227½ days as a non-skilled worker. His services, as per the reference were disengaged in July, 2004 and he had raised the industrial dispute by issuance of demand notice after more than **seven years** i.e. demand notice was given on 27.8.2012. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

33. In view of the discussion and findings arrived at by me above, a lump-sum compensation of ₹25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues no. 1 and 2 are answered partly in the affirmative and accordingly decided in favour of the petitioner, while issue no.4 is answered in the negative and decided against the respondent.

ISSUE NO. 3

34. Not pressed.

RELIEF

35. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of ₹25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 8/2010

Date of Institution : 16.1.2010

Date of decision : 30.11.2019

Shri Baldev Raj s/o Shri Rattan Chand, r/o VPO Raipur Sahora, Tehsil & District Una, H.P.
...*Petitioner.*

Versus

Managing Director, M/s. Mayfair Biotech Pvt. Ltd. Industrial Area Mehatpur, Distt. Una,
H.P. ...*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Respondent *ex parte*

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Baldev Raj S/O Sh. Rattan Chand by the management of M/S Mayfair Pvt. Ltd. Industrial Area Mehatpur, Distt. Una, H.P. w.e.f. 23.2.2008 on the basis of alleged theft is legal and justified? If not, what relief of service benefits the above workman is entitled to?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was appointed by the respondent management as a helper in the year 2005 and had continuously worked as such till 22.2.2008 without any break. On 23.2.2008 his services were orally terminated by the respondent without issuing any show cause notice or charge sheet. His termination was thus violative of the principles Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). It is further averred by the petitioner that while terminating his services the management had not complied with the principle of ‘last come first go’, as persons junior to him, namely, S/Sh. Tara Chand S/o Shri Paras Ram, Amit Kumar S/o Shri Ram Kumar, Darshan Singh S/o Shri Mehar Singh and Satpal had been retained by the respondent. New/fresh hand, namely, Shri Dhyan Singh had been appointed after the termination of the services of the petitioner. The respondent, thus, had violated the provisions of Sections 25- G and 25-H of the Act. A false FIR had been lodged against the petitioner after his termination with the sole objective of victimizing him and that too without any specific proof regarding theft. The said act of the respondent was also an unfair labour practice. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages, seniority and all other consequential benefits.

3. Earlier, the respondent had been duly served for 1.6.2010, but none has put in appearance on his behalf. He was, thus, proceeded against *ex parte* by the learned predecessor in office of mine vide order of the even date.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim. The petitioner, namely, Shri Baldev Raj had appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A.

5. After hearing the *ex parte* arguments, the learned predecessor in office of mine had passed an *ex parte* Award on dated 02.11.2010.

6. Be it recorded here that the Award dated 02.11.2010 was challenged by the respondent before the Hon'ble High Court of H.P. by way of a Civil Writ Petition. It was disposed of by the Hon'ble High Court by setting aside the *ex parte* Award passed by this Tribunal. The matter was remanded back to this Tribunal, with the direction to decide the reference afresh after affording an opportunity to the respondent put forth his case. The parties had been directed through their learned respective counsel to appear before this Tribunal on 04.11.2019. It was specifically ordered that this Tribunal shall not issue process to either of the parties, as the date in the matter for appearance before this Tribunal had been fixed by the Hon'ble High Court of H.P.

7. On the given date, i.e. 04.11.2019, the case was taken up for hearing by this Tribunal. On that date none had put in appearance on behalf of the respondent. The respondent for the reasons best known to him had again chosen not to contest the reference. The respondent was again proceeded against *ex parte*. Costs of Rs.7,500/- imposed upon the respondent by the Hon'ble High Court was also not paid to the petitioner.

8. *Ex parte* arguments of the learned counsel for the petitioner heard and records gone through.

9. The petitioner, namely, Shri Baldev Raj examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

10. From the testimony of the petitioner, it reveals that he had worked continuously with the respondent management from the year 2005 till his termination on 22.2.2008. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also evident from his testimony that the respondent had retained persons junior to him, namely, S/Sh. Tara Chand, Amit Kumar, Darshan Singh and Satpal. One Shri Dhyan Singh had also been appointed by the respondent after his termination. No opportunity of re-employment was afforded to him. Some FIR is stated to have been filed against the petitioner after 8.3.2008 i.e. after he had raised an industrial dispute by approaching the Labour-cum-Conciliation Officer through a demand notice.

11. Nothing contrary has been pleaded and proved by the respondent management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

12. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination on 23.2.2008 till his reinstatement. He

shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : **9/2010**
Date of Institution : **16.1.2010**
Date of decision : **30.11.2019**

Shri Sanjeev Kumar alias Nathi S/o Sh. Jeet Singh, R/o V& P.O. Dehlan, Distt. Una, H.P.
...*Petitioner.*

Versus

Managing Director, M/s. Mayfair Biotech Pvt. Ltd. Industrial Area Mehatpur, Distt. Una, H.P.
...*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vijay Kaundal, Adv.

For the Respondent : Respondent *ex parte*

AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Sanjeev Kumar alias Nathi S/o Shri Jeet Singh by the management of M/s Mayfair Biotech Pvt. Ltd. Industrial Area Mehatpur, Distt. Una, H.P. w.e.f. 23.2.2008 on the basis of alleged theft is legal and justified? If not, what relief of service benefits the above workman is entitled to?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was appointed by the respondent management as a helper in the year 2004 and had

continuously worked as such till 22.2.2008 without any break. On 23.2.2008 his services were orally terminated by the respondent without issuing any show cause notice or charge sheet. His termination was thus violative of the principles Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). It is further averred by the petitioner that while terminating his services the management had not complied with the principle of 'last come first go', as persons junior to him, namely, S/Sh. Tara Chand S/o Shri Paras Ram, Amit Kumar S/o Shri Ram Kumar, Darshan Singh S/o Shri Mehar Singh and Satpal had been retained by the respondent. New/fresh hand, namely, Shri Dhyan Singh had been appointed after the termination of the services of the petitioner. The respondent, thus, had violated the provisions of Sections 25- G and 25-H of the Act. A false FIR had been lodged against the petitioner after his termination with the sole objective of victimizing him and that too without any specific proof regarding theft. The said act of the respondent was also an unfair labour practice. The petitioner, thus, seeks to get his termination set aside with the direction to the respondent to reinstate him with full back wages, seniority and all other consequential benefits.

3. Earlier, the respondent had been duly served for 1.6.2010, but none has put in appearance on his behalf. He was, thus, proceeded against *ex parte* by the learned predecessor in office of mine vide order of the even date.

4. The petitioner was then directed to adduce *ex parte* evidence in support of his claim. The petitioner, namely, Shri Sanjeev Kumar had appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A.

5. After hearing the *ex parte* arguments, the learned predecessor in office of mine had passed an *ex parte* Award on dated 02.11.2010.

6. Be it recorded here that the Award dated 02.11.2010 was challenged by the respondent before the Hon'ble High Court of H.P. by way of a Civil Writ Petition. It was disposed of by the Hon'ble High Court by setting aside the *ex parte* Award passed by this Tribunal. The matter was remanded back to this Tribunal, with the direction to decide the reference afresh after affording an opportunity to the respondent put forth his case. The parties had been directed through their learned respective counsel to appear before this Tribunal on 04.11.2019. It was specifically ordered that this Tribunal shall not issue process to either of the parties, as the date in the matter for appearance before this Tribunal had been fixed by the Hon'ble High Court of H.P.

7. On the given date, i.e. 04.11.2019, the case was taken up for hearing by this Tribunal. On that date none had put in appearance on behalf of the respondent. The respondent for the reasons best known to him had again chosen not to contest the reference. The respondent was again proceeded against *ex parte*. Costs of Rs.7,500/- imposed upon the respondent by the Hon'ble High Court was also not paid to the petitioner.

8. *Ex parte* arguments of the learned counsel for the petitioner heard and records gone through.

9. The petitioner, namely, Shri Sanjeev Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. He reiterated the averments made in the statement of claim.

10. From the testimony of the petitioner, it reveals that he had worked continuously with the respondent management from the year 2004 till his termination on 22.2.2008. As per the petitioner he had worked uninterruptedly with the respondent during the said interregnum. It is also evident from his testimony that the respondent had retained persons junior to him, namely, S/Sh.

Tara Chand, Amit Kumar, Darshan Singh and Satpal. One Shri Dhyan Singh had also been appointed by the respondent after his termination. No opportunity of re-employment was afforded to him. Some FIR is stated to have been filed against the petitioner after 8.3.2008 i.e. after he had raised an industrial dispute by approaching the Labour-cum-Conciliation Officer through a demand notice.

11. Nothing contrary has been pleaded and proved by the respondent management. It, thus, has to be inferred that the respondent has violated the mandatory provisions of Sections 25-F, 25-G and 25-H of the Act and as such the termination of the petitioner is void and illegal in the eyes of law.

12. Consequently, the termination of the petitioner is set aside and quashed. He is ordered to be re-engaged forthwith at the same place and post. The petitioner has discharged his initial onus of proving that he was not gainfully employed during his forced idleness. He is, thus, held entitled to 50% back wages from the date of his illegal termination on 23.2.2008 till his reinstatement. He shall further be entitled to continuity in service from the date of his illegal termination. The reference is disposed of in the aforesaid terms. A copy of this award be sent to the appropriate Government for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 30th day of November, 2019.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

MUNICIPAL CORPORATION DHARAMSHALA, DISTT. KANGRA, HIMACHAL PRADESH

NOTIFICATION

Dharamshala-176 215, the 30th July, 2020

No. DMC-Est(B)2-1/2020.—In compliance to the resolution number 27(7) passed by the Municipal Corporation General House on 02-07-2020, and the duties entrusted upon the Commissioner u/s 50(b) read with Section 67(2) of Himachal Pradesh Municipal Corporation Act, 1994, Recruitment & Promotion Rules as applicable in Municipal Corporation Shimla shall be applicable to Dharamshala Municipal Corporation. It is further notified that the post for which Municipal Corporation Shimla has not adopted/framed R&P Rules, the Recruitment & Promotion Rules framed/adopted by the other department of the Government of Himachal Pradesh shall be applicable. The detail of the posts for which R&P Rules are adopted is as per Annexure-A.

Sd/-
*Commissioner,
Municipal Corporation Dharamshala.*

**Adoption of Municipal Corporation Shimla/H.P. Government Department/Other Authorities
R&P Rules for the different categories of posts in Dharamshala Municipal Corporation**

Sl. No.	Name of Post	No. of Posts	Cadre	Department/Authority of which R&P Rules Adopted
1.	Municipal/Assistant Engineer.	2	Secondment/MCD	HPPWD/IPH
2.	Accountant	1	Secondment/MCD	BBNDA Solan
3.	Junior Accountant	2	Secondment/MCD	Council for Sci., Tech. & Environment, H.P.
4.	Parsonal Officer/PA/Jr. Scale Stenographer.	2	Secondment/MCD	Common/Department of Personnel.
5.	Junior Office Assistant	4	Secondment/MCD	Common/Department of Personnel.
6.	Junior Engineer	2	MC D/shala	MC Shimla
7.	Superintendent Grade-II	1	MC D/shala	MC Shimla
8.	Senior Assistant	1	MC D/shala	MC Shimla
9.	Statistical Assistant	1	MC D/shala	Statstical Department
10.	Junior Assistant	2	MC D/shala	MC Shimla
11.	Clerk	3	MC D/shala	MC Shimla
12.	Assistant/Jr. Draftsman	2	MC D/shala	MC Shimla
13.	Sanitary Inspector	1	MC D/shala	MC Shimla
14.	Sanitary Supervisor	3	Secondment/MCD	MC Shimla
15.	Work Supervisor	5	MC D/shala	MC Shimla
16.	Mate	2	MC D/shala	MC Shimla
17.	Mason	4	MC D/shala	MC Shimla
18.	Mali	1	MC D/shala	MC Shimla
19.	Driver	4	MC D/shala	MC Shimla
20.	Peon	2	MC D/shala	MC Shimla
21.	Chowkidar	1	MC D/shala	MC Shimla
22.	Plumber	1	MC D/shala	MC Shimla

23.	Beldar	21+44*=65 (44 posts temporary created and are in dying cadre).	MC D/shala	MC Shimla
24.	Head Zamadar	3	MC D/shala	MC Shimla
25.	Safai Karamchari	12	MC D/shala	MC Shimla
26.	Technical Machanic	1	MC D/shala	MC Shimla
27.	Helper	1	MC D/shala	MC Shimla

पंचायती राज विभाग

अधिसूचना

शिमला—171 009, 11 सितम्बर, 2020

सं० पीसीएच-एचए(3)4/07-58715-18.—इस विभाग की समसंख्यक अधिसूचना जिसे दिनांक 26 नवम्बर, 2019 को राजपत्र में प्रकाशित किया गया है के अन्तर्गत, जिला कांगड़ा के विकास खण्ड भवारना की ग्राम सभा भगोटला का नाम बदलकर “कुशलम भगोटला” करने हेतु प्रस्तावना द्वारा सम्बन्धित ग्राम सभा सदस्यों से आक्षेप एवं सुझाव आमंत्रित किए गए थे तथा उपायुक्त, जिला कांगड़ा को इस सम्बन्ध में आक्षेप/सुझाव प्राप्त करने और उन पर विचार करने के उपरान्त अन्तिम सिफारिश करने के लिए प्राधिकृत किया गया था;

और क्योंकि उपरोक्त अधिसूचना में निर्दिष्ट अवधि के भीतर प्राप्त आक्षेपों/सुझावों पर विचार किया गया तथा विनिश्चय किया गया ।

अतः हिमाचल प्रदेश के राज्यपाल, हिमाचल प्रदेश पंचायती राज अधिनियम, 1994 (वर्ष 1994 का अधिनियम संख्यांक 4) की धारा 3 की उप-धारा (2) के खण्ड (घ) द्वारा प्रदत्त शक्तियों के अधीन, जिला कांगड़ा, के विकास खण्ड भवारना, की ग्राम सभा भगोटला का नाम बदलकर ग्राम सभा “कुशलम भगोटला” करने के सहर्ष आदेश प्रदान करते हैं ।

आदेश द्वारा,

हस्ताक्षरित/—
सचिव (पंचायती राज)।

**ब अदालत तहसीलदार एवं कार्यकारी दण्डाधिकारी, तहसील चढ़गांव,
जिला शिमला (हि0 प्र0)**

विजेश कुमार

बनाम

आम जनता

उनवान मुकद्दमा.—जेरे धारा 13(3) जन्म एवं मृत्यु अधिनियम, 1969.

दरखास्त जेरे धारा 13(3) जन्म एवं मृत्यु पंजीकरण अधिनियम, 1969 श्री विजेश कुमार पुत्र स्व0 श्री भीष्म सिंह, निवासी गांव चिलाला, डाकघर चिलाला, तहसील चढ़गांव, जिला शिमला (हि0 प्र0) ने दरखास्त गुजारी है कि वह अपने पिता स्व0 श्री भीष्म सिंह की मृत्यु का पंजीकरण ग्राम पंचायत भम्फड़ के रजिस्टर में दर्ज करवाना चाहता है। प्रार्थी का कहना है कि उसने ग्राम पंचायत चढ़गांव के रजिस्टर में अपने पिता की मृत्यु का पंजीकरण करवाया था। परन्तु वर्ष 1997 की भारी बाढ़ में ग्राम पंचायत चढ़गांव का तमाम रिकार्ड नष्ट हो गया। वर्ष 2003 में भम्फड़ पंचायत के गठन के बाद प्रार्थी का गांव चिलाला भम्फड़ पंचायत में मिलाया गया उक्त पंचायत में प्रार्थी के पिता की मृत्यु बारे कोई भी रिकार्ड मौजूद नहीं है। इसलिए प्रार्थी अब अपने पिता की मृत्यु का पंजीकरण ग्राम पंचायत भम्फड़ के जन्म एवं मृत्यु रजिस्टर में दर्ज करवाना चाहता है। प्रार्थी के शपथ-पत्र के मुताबिक प्रार्थी के पिता की मृत्यु तिथि 13-10-1996 है।

अतः सर्वसाधारण को इस इश्तहार द्वारा आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति या रिश्तेदार को इस बारे कोई उजर व एतराज हो तो वह अपना एतराज असालतन या वकालतन मिति 25-09-2020 को प्रातः 10.00 बजे अदालत हजा में हाजिर आकर पेश कर सकता है। उक्त तारीख के बाद कोई भी एतराज स्वीकार नहीं किया जाएगा और प्रार्थी के पिता की मृत्यु का पंजीकरण ग्राम पंचायत भम्फड़ के रिकार्ड में दर्ज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 02-09-2020 को हमारे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

कार्यकारी दण्डाधिकारी,
चढ़गांव, जिला शिमला (हि0 प्र0)।

